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Biennial Report  
OF THE  
**Attorney General**  
OF THE  
**State of Colorado**



Years 1921 and 1922

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**VICTOR E. KEYES**  
Attorney General

DENVER, COLORADO  
HAMES BROTHERS, PRINTERS  
1923



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1923

## ATTORNEYS GENERAL OF COLORADO

From the Organization of the State

A. J. Sampson .....	1877-1878
Charles W. Wright .....	1879-1880
Charles H. Toll .....	1881-1882
David F. Urmey.....	1883-1884
Theodore H. Thomas .....	1885-1886
Alvin Marsh .....	1887-1888
Samuel W. Jones .....	1889-1890
Joseph H. Maupin .....	1891-1892
Eugene Engley .....	1893-1894
Byron L. Carr .....	1895-1898
David M. Campbell .....	1899-1900
Charles C. Post .....	1901-1902
Nathan C. Miller .....	1903-1906
William H. Dickson .....	1907-1908
John T. Barnett .....	1909-1910
Benjamin Griffith .....	1911-1912
Fred Farrar .....	1913-1916
Leslie E. Hubbard .....	1917-1918
Victor E. Keyes .....	1919-1922

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# STATE OF COLORADO LEGAL DEPARTMENT

Attorney General  
VICTOR E. KEYES

Deputy Attorney General  
Charles Roach

## Assistant Attorneys General

William R. Ramsey  
Forrest C. Northcutt  
R. H. Blackman  
Samuel Chutkow  
Charles R. Conlee  
Bentley M. McMullin  
John S. Fine

Inheritance Tax Commissioner  
R. H. Blackman

Deputy Inheritance Tax Commissioners  
Charles A. Eaton  
Arthur M. Morris

Inheritance Tax Appraisers  
O. S. Brinker  
G. W. Moscript

## Stenographic and Clerical Assistants

Miss Margaret E. Fallon  
Mrs. May Bradford  
Mrs. Christean M. Crafts  
Miss Margaret Miller  
Miss Madeline Lewis  
Miss Helen Hughes

Charles H. Sherrick, Assistant Attorney General, resigned.



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BIENNIAL REPORT  
OF THE  
ATTORNEY GENERAL  
OF THE  
STATE OF COLORADO

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To His Excellency  
OLIVER H. SHOUP,  
Governor of Colorado.

Sir:—

Pursuant to law, I have the honor to submit herewith to you, my second Biennial Report as Attorney General of the State, beginning January 11, 1921, and ending January 9, 1923.

Schedule I. Contains a list of cases pending and disposed of in the Supreme Court of the United States.

Schedule II. Contains a list of cases pending and disposed of in the United States District Court of Colorado.

Schedule III. Contains a list of criminal cases pending and disposed of in the Supreme Court of the State of Colorado.

Schedule IV. Contains a list of civil cases pending and disposed of in the Supreme Court of the State of Colorado.

Schedule V. Contains a list of civil cases pending and disposed of in the District Courts of the State of Colorado.

Schedule VI. Contains a list of Workmen's Compensation Cases.

Schedule VII. Contains a list of Oil Tax Cases.

Schedule VIII. Contains opinions and syllabi of opinions rendered in 1921 and 1922.

Copies of all official opinions are preserved in this office and a large number of them are incorporated herein, for the convenience of officers and others interested in the subjects covered by them.

Some opinions of minor importance are omitted, and in many cases a synopsis only of those given is reported; however, the date, number of the opinion, person addressed, and subject considered was given so that, if desired, one may easily find on file in the office, the opinion in full.

## WATER COMMISSION

In order to avoid frequent controversies and prevent costly litigation, the Twenty-Third General Assembly passed five different measures relating to the waters of the Arkansas, South Platte, La Plata, Laramie and Colorado Rivers. These statutes provide for the appointment of a commissioner on behalf of Colorado to negotiate a compact or agreement between the states of Colorado and Kansas respecting the waters of the Arkansas River, between the states of Colorado and Nebraska respecting the waters of the South Platte River, between Colorado and New Mexico respecting the La Plata River, between the states of Colorado and Wyoming respecting the Laramie River, between the states of Colorado and Arizona, California, Nevada, New Mexico, Utah and Wyoming respecting the Colorado River.

The commission, consisting of commissioners from the seven states named, with Honorable Herbert Hoover as the representative of the Federal Government and chairman of said commission, met in Santa Fe, New Mexico, and agreed upon a treaty or compact with respect to the waters of the Colorado River, which, before it becomes effective, must be ratified by the legislatures of the different states involved and by Congress.

## GRAND JUNCTION SCHOOL

The Congress of the United States by an act approved April 4, 1910, granted to the State of Colorado the property known as The Grand Junction School, including the lands, buildings and fixtures belonging thereto, upon certain terms and conditions mentioned in the grant.

The Governor accepted said grant and since that time said property has been and is now under the control of the State of Colorado.

At the time said grant was made by Congress, the land belonging to the school was irrigated by virtue of certain water rights then owned by the United States. The water rights consisted of 352 shares of stock in the Grand Valley Irrigation Company evidenced by Certificate No. 586 for 336 shares issued January 16, 1896; Certificate No. 1250 for 16 shares issued September 27, 1900.

Upon investigation by this department, it was found that said certificates of stock could not be located, either in the possession of the United States or of the State of Colorado, and that on the books of the Grand Valley Irrigation Company the said stock appeared in the name of the United States, no transfer of the same ever having been made. The matter was taken up with the Department of the Interior of the United States and this office took the position that under the grant made by Congress said water rights belonged to this state. This contention was finally sustained and a written assignment of all of said stock was obtained from the United States to the State of Colorado, and also authority to

have said stock transferred on the books of the Irrigation Company so that the said stock will appear thereon in the name of the State of Colorado, the real owner thereof. This action fully clears up any question that might be raised as to the ownership of the water rights for said valuable property.

## OIL TAX CASES

Considerable revenue has been derived from the law providing a tax on petroleum products used in propelling motor vehicles.

In some cases collections were made without suit, while in many cases suit was necessary. During the biennial period from December 1, 1920, to December 1, 1922, 89 suits have been filed on behalf of the people, and in different counties throughout the state, 40 of which are now pending or in judgment.

The total collections made and turned over to James Duce, State Oil Inspector, amount to the sum of \$234,500.78.

In the case of *People vs. Altitude Oil Company*, suit was brought in the District Court of Denver County, and on March 30, 1921, judgment was obtained in favor of the plaintiff. The defendant then took the case to the Supreme Court of Colorado, where the law was held to be valid, and the judgment was affirmed November 7, 1921. The Oil Company then appealed from the decision of our State Supreme Court upholding the constitutionality of the law to the Supreme Court of the United States, where, upon motion of this department, a substantial victory for the state was won by having the appeal dismissed. Thereafter, the sum of \$9,476.85, principal, interest and costs was collected and turned in to the State Treasury.

## FORMER STATE TREASURER'S ACCOUNTS

The following actions have been instituted on official bonds to recover shortages existing in the accounts of certain former State Treasurers.

*People vs. Henry Gebhardt et al.*,

*People vs. Horace W. Bennett and Thomas Keeley*,

*People vs. William J. Galligan et al.*

The action entitled *People vs. William J. Galligan et al.* was tried to a jury May, 1922, and the jury being unable to agree upon a verdict, was discharged. The case is set for retrial February 13, 1923. Demurrers to the complaints in the other actions were overruled December 30, 1922.

A complaint has been prepared in the claim of the *People vs. Alfred E. Bent et al.* and submitted to the Auditor of State for verification. The heirs of Whitney Newton have agreed to pay the claim of the state on Whitney Newton's official bond, if the state recovers judgment in any one of the three pending actions.



## INHERITANCE TAX

There was submitted to the Twenty-third General Assembly a bill prepared in this office to revise the inheritance tax law. That bill was enacted into law, and is now in force in the state. The total amount of inheritance tax collections for the biennial period from November 30th, 1920, to November 30th, 1922, amounted to \$1,013,164.15. The total amount collected from November 30th, 1922, to January 9, 1923, amounted to \$78,810.63. Total, \$1,091,974.78. During said period the department concluded 16,804 estates, of which 10,224 were taxable estates.

The revised law has increased the state's revenue from this source since its enactment by \$88,357.86.

## CHILD WELFARE BUREAU

The Sheppard-Towner Act passed by Congress provides Federal Aid to the various states for child welfare work, upon certain conditions mentioned therein, which require acceptance upon the part of the state desiring to obtain the benefits thereof, and also co-operation with the Federal Government in the administration of the provisions of the act. The Governor has accepted the provisions of the act for Colorado, and designated the State Child Welfare Bureau as the agency of the state to co-operate in carrying out the provisions of the law. The act further requires acceptance by the General Assembly.

A suit has been filed in the Supreme Court of the United States by the State of Massachusetts against the Secretary of the Treasury of the United States and other federal officials, attacking the constitutionality of the Sheppard-Towner Act, and seeking to enjoin the payment of any money from the United States Treasury to the states under said act.

## CORPORATION FRANCHISE REVOKED

Articles were filed in the office of the Secretary of State incorporating what is known as "The Centennial State University," purporting to be an educational institution. The papers were in proper form and a certificate of authority to do business in this state was duly issued by the Secretary of State.

Complaint was made to this department from various sources that this was not a bona fide institution, with the result that an investigation was made.

It was disclosed that the so-called university had no grounds, buildings or equipment, no endowment fund and no proper means to conduct or carry on an educational institution, but was offering to confer honorary degrees upon certain individuals.

A suit was prepared and filed in the District Court of the City and County of Denver to cancel the said articles of incorporation and to revoke the authority of said so-called institution to do business in this state.

The case came on for hearing and the state obtained judgment against said corporation, and the court entered an order canceling and forfeiting said articles of incorporation and revoking its authority to do business as such corporation or to further exercise any rights, privileges, or franchise thereunder.

### CONCLUSION

I wish to express my appreciation of the faithfulness and efficiency of my office force.

My association with the officials and employees of the various state departments has given me pleasure, our relations have been harmonious and I wish to extend to each and all of them my hearty good will.

Thanking you for the uniform courtesy and consideration which you have always shown me and assuring you of my esteem and friendship, I am,

Most respectfully,

VICTOR E. KEYES,  
Attorney General.



Civil and Criminal Cases  
1921-1922





**SCHEDULE I****CIVIL CASES IN SUPREME COURT OF UNITED STATES**

1921-1922

Wyoming vs. Colorado.

Interstate streams—water rights.  

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Weiland, et al, vs. Pioneer Irrigation Company.

Diversion of waters in Colorado for application outside of the state.  

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State of New Mexico vs. State of Colorado.

Original proceedings to establish southern boundary of Colorado and northern boundary of New Mexico.  

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The Altitude Oil Co. vs. The People of the State of Colorado.

Appeal from decision of the Supreme Court of Colorado upholding constitutionality of "An Act providing a tax on petroleum products used in propelling motor vehicles."

Nov. 13, 1922, Mandate of U. S. Supreme Court dismissing writ of error for want of jurisdiction filed.

**SCHEDULE II****CIVIL CASES IN UNITED STATES DISTRICT COURT**

District of Colorado

Western Irrigation District vs. Riverside Irrigation District, et al.

Interstate water rights. Pending.

(Same as last biennial report. No further entries.)  

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Gas Securities Co. vs. E. B. Moore, as Assessor of Adams County, et al, and Colorado Tax Commission.

Mandamus proceedings. (Not on docket.)

No further entries on docket.  

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Guaranty Trust Co. of New York, as Trustee, et al, vs. The Colorado Springs &amp; Cripple Creek Dist. Ry. Co.

(Not on docket.)

No further entries.  

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The State of Colorado vs. Roger W. Toll, as Superintendent, etc. Injunction.

Pending. (Entry by Mr. Roach.)  

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The Boyle Commission Co. vs. The Public Utilities Commission. Judgment for Defendant. 

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United States Land Office, Durango. Ser. No. 08828. Albert Parker vs. State of Colorado.

Entries incomplete. Mr. Keyes.

### SCHEDULE III

#### CRIMINAL CASES IN SUPREME COURT

No.	Title of Cause	Offense
9785	Morletti vs. People.....	Murder .....
9891	Blanchard vs. People.....	Forgery .....
9907	People vs. Sandy.....	Violating Liquor Law.....
9954	Giacommozzi vs. People.....	Murder .....
9976	McKee vs. People.....	Murder .....
10016	Stone et al. vs. People.....	Highway Robbery.....
10002	Moeller et al. vs. People.....	Robbery .....
10039	Nesteroff vs. People.....	Murder .....
10072	Simmons vs. People.....	Violating Liquor Law.....
10084	Bershenyi vs. People.....	Murder .....
10087	Miller (E.) vs. People.....	Train Robbery .....
10095	Coolidge vs. People.....	Contempt of Court.....
10112	McAndrews vs. People.....	Murder .....
10090	Enyart vs. People.....	Murder .....
10132	Warner vs. People.....	Loan Shark Law.....
10129	Roberts vs. People.....	Bulk Sales Law.....
10160	Lowdermilk vs. People.....	Larceny .....
10158	Corbett et al. vs. People.....	Gambling .....
10159	Shirley et al. vs. People.....	Gambling .....
10157	The People vs. Driscoll.....	.....
10187	O'Donnell vs. People.....	Highway Robbery .....
10208	Stolz vs. People.....	Embezzlement .....
10188	McKee vs. People.....	Murder .....
10221	Baker (J. J.) vs. People.....	Murder .....
10275	Kelliher vs. People.....	Violating Liquor Law.....
10235	Sullivitch vs. People.....	Violating Liquor Law.....
10247	Koch vs. People.....	Malicious Mischief .....
10250	Van Diest vs. People.....	Robbery .....
10283	Curtis vs. People.....	Rape .....
10291	People vs. Fontuccio.....	Industrial Law .....
10289	People vs. Apostolos et al.....	Unlawful Combination .....
10290	People vs. Crissey & Fowler Lbr. Co.....	Unlawful Combination .....
10077	Campbell et al. vs. People.....	Unlawful Combination .....
10078	Johnson vs. People.....	Unlawful Combination .....
10302	Conner (B.) vs. People.....	Embezzlement .....
10311	O'Chiato vs. People.....	Rape .....
10296	Turner vs. People.....	Violating Liquor Law.....
10314	Drott vs. People.....	Larceny .....
10344	Wiley vs. People.....	.....
10413	Smuk vs. People.....	Violation Liquor Law.....
10362	Jumes vs. People.....	Violation Liquor Law.....
10412	LaShar vs. People.....	False Pretenses .....
10380	Lonjers vs. People.....	Cattle Stealing .....
10391	Willis vs. People.....	Malpractice .....
10383	Wilkins vs. People.....	Immoral Practice .....
10395	Pasch vs. People.....	Violation Liquor Law.....
10401	Hoffman vs. People.....	Violation Liquor Law.....
10422	McConnell vs. People.....	Violation Liquor Law.....
10425	Stitt vs. People.....	Murder .....
10444	Shaw vs. People.....	Receiving Stolen Goods .....
10426	Henry vs. People.....	False Pretenses .....
10448	Cargill vs. People.....	Burglary .....
10457	Morton vs. People.....	False pretenses .....
10359	People vs. Casias.....	Intoxicating Liquor .....
10479	Edwards vs. People.....	Manslaughter .....
10459	Hohn vs. People.....	Taking Indecent Liberties.....
10498	Baker et al. vs. People.....	Intimidation .....
10483	Miller et al. vs. People.....	False Pretenses .....
10499	Banas vs. People.....	Violating Liquor Law.....
10531	Byrd vs. People.....	Violating Liquor Law.....

### SCHEDULE III

### CRIMINAL CASES IN SUPREME COURT

Supersedeas	Status
Allowed.....	Affirmed October 2, 1922
Allowed.....	Reversed January 9, 1922
.....	Reversed January 9, 1922
.....	Affirmed July 3, 1922
Allowed.....	Reversed July 3, 1922
Denied.....	.....
.....	Affirmed June 6, 1921
Allowed.....	Affirmed February 6, 1922
Denied.....	Affirmed July 5, 1921
Allowed.....	Reversed June 5, 1921
.....	Reversed July 5, 1921
Allowed.....	Affirmed July 3, 1922
Allowed.....	Reversed July 3, 1922
Denied.....	Affirmed July 5, 1921
Allowed.....	Affirmed July 5, 1922
Allowed.....	Reversed March 6, 1922
Denied.....	Affirmed November 8, 1921
.....	Reversed October 2, 1921
.....	Reversed October 2, 1922
.....	Reversed October 2, 1922
Denied.....	Affirmed February 6, 1922
Allowed.....	Affirmed November 6, 1922
Allowed.....	Affirmed July 3, 1922
Allowed.....	Affirmed July 3, 1922
.....	Reversed April 6, 1922
Allowed.....	Affirmed May 1, 1922
.....	Reversed February 6, 1922
Denied.....	Affirmed February 6, 1922
Allowed.....	Reversed December 4, 1922
.....	Pending
.....	Writ of Error Pending
.....	Pending
Allowed.....	Affirmed October 2, 1922
.....	Affirmed October 2, 1922
Denied.....	Affirmed May 9, 1922
Allowed.....	Pending
Allowed.....	Pending
.....	Reversed May 1, 1922
Denied.....	Affirmed June 5, 1922
Denied.....	Affirmed September 11, 1922
Denied.....	Affirmed July 3, 1922
.....	Pending
.....	Pending
Allowed.....	Pending
Denied.....	Affirmed September 11, 1922
Denied.....	Affirmed September 11, 1922
Denied.....	Pending
Allowed.....	Pending
.....	Pending
Denied.....	Affirmed October 2, 1922
Denied.....	Affirmed September 11, 1922
Allowed.....	Pending
Allowed.....	Pending
Allowed.....	Pending
Allowed.....	Pending
Denied.....	Affirmed November 6, 1922
.....	Pending
.....	Pending
Denied.....	Affirmed December 4, 1922
.....	Pending

**SCHEDULE IV****CIVIL CASES IN SUPREME COURT OF COLORADO**

9771. Cronk vs. Shoup, et al.  
Judgment affirmed. Petition for rehearing denied.
9772. People vs. United Mine Workers of America, et al.  
Injunction. Judgment reversed April 5, 1921.
10123. The West Pueblo Ditch Etc. Co. vs. The Bessemer Irrigating Ditch Co.  
Pending.
10125. Edward F. Chambers vs. The People ex rel.  
Todd C. Storer. Quo Warranto. Judgment affirmed.
10236. A. M. Stong vs. Industrial Commission.  
Mandamus. Judgment affirmed.
10155. H. R. Williams, et al, vs. Peter Coleman Robinson.  
Pending.
10144. The People ex rel. Fulton vs. Rev. Wm. O’Ryan, et al.  
Mandamus. Judgment reversed.
10147. The People ex rel. Virginia Thompson, vs. Elizabeth Purcell.  
Habeas Corpus. Judgment reversed.
10063. The Altitude Oil Company vs. The People.  
Collection of petroleum products tax. Judgment of lower court affirmed. Petition for rehearing denied. Appealed to Supreme Court of United States.
10075. The Board of Capitol Managers vs. W. Worth Brasie.  
Judgment reversed. On rehearing former opinion adhered to.
10139. Grant McFerson as State Bank Commissioner vs. National Surety Co. and The Louisville Bank.  
Pending.
10212. Board of Regents of the University of Colorado vs. Thomas V. Wilson, Executor, etc.  
Judgment reversed and case remanded. Petition for rehearing. Pending.
10291. The People vs. Nicholas Fontuccio.  
Unlawful combination, Pending.

10289. The People vs. Apostolos, et al.  
Unlawful combination. Pending.
10290. The People vs. Crissey & Fowler Lumber Company, et al.  
Unlawful combination. Pending.
10077. James M. Campbell, et al. vs. The People, etc.  
Unlawful combination. Judgment affirmed.
10078. J. W. E. Johnson vs. The People, etc.  
Unlawful combination. Judgment affirmed.
10123. The West Pueblo Ditch & Reservoir Co. vs. The Bessemer  
Irrigating Ditch Co.  
Pending.
10515. The People ex rel. vs. Wm. V. Roberts, et al.  
Pending.
10427. The People vs. Ida Bell Eliff, Executrix of Estate of Mary  
B. Eaton, deceased.  
Construction of Inheritance Tax Law. Pending.
10321. Earl Wilson vs. The People ex rel. Jackson Cochrane.  
Quo Warranto. Affirmed.
10292. The People ex rel. vs. Harry E. Mulnix.  
Mandamus. Suit dismissed.
10415. Board of Capitol Managers et als. vs. McClellan Rusan.  
Civil Service case (appealed from District Court). Judgment  
of lower court affirmed.
10547. The People ex rel. vs. Lee, Nuckolls and Raber.  
Conservancy Act. Pueblo District. Quo Warranto. Pending.
- ..... People ex rel. Wooters vs. J. Blanchard, et al.  
Writ of certiorari. Judgment affirmed.
- ..... Carl S. Milliken, as Secretary of State, vs. District Court  
of Arapahoe County.  
Writ of prohibition. Writ made peremptory.
10468. The Riverside Ice & Storage Co. vs. The People, etc.  
Collection of road tax. Supersedeas denied. Judgment  
affirmed.



10469. The Riverside Ice & Storage Co. vs. The People, etc.

Collection of road tax. Supersedeas denied. Judgment affirmed.

## SCHEDULE V

### CIVIL CASES IN THE DISTRICT COURTS OF STATE OF COLORADO

#### City and County of Denver

70414. Cronk vs. Shoup, et al.

Mandamus. Suit dismissed. Appealed to Supreme Court. Judgment affirmed.

74665. The People vs. The Altitude Oil Company.

Collection of road tax. Judgment for plaintiff. Appealed to Supreme Court. Judgment affirmed.

74331. Wichita Great Western Underwriters Appeal from Order of Insurance Commissioner.

Affirmed by District Court.

75194. The Industrial Commission vs. Allison Stocker.

Failure to file notice with Commission. Pending.

75195. The Industrial Commission vs. The C. S. Card Iron Works.

Suit on penalty for failing to file notice with Industrial Commission 30 days prior to change in working conditions.

No number on docket. City and County of Denver vs. Highway Commission, et al.

Suit abandoned by plaintiff.

75512. People ex rel. Alice Adams Fulton vs. Rev. Fr. William O'Ryan et al.

Mandamus. Writ Dismissed. Appealed to Supreme Court.

..... The People ex rel. Dickinson vs. Norlin et al.

Mandamus. Judgment for defendant.

..... David P. Howard vs. Arthur M. Stong and H. E. Mulnix.

Injunction. Action dismissed.

75753. The People ex rel. Todd C. Storer vs. Edward F. Chambers.

Quo Warranto. Judgment for plaintiff. Appealed to Supreme Court.

..... McClellan Rusan vs. The Civil Service Commission.

Mandamus. Trial had and writ made peremptory as to hearing but denied as to salary.

76273. Industrial Commission vs. A. M. Stong.

Mandamus. Writ made peremptory. Appealed to Supreme Court. No. 10236.

76213. The People ex rel. vs. Centennial State University.

Action to revoke corporate franchise.

..... McClellan Rusan vs. Board of Capitol Managers.

Mandamus. Judgment for plaintiff.

..... The People ex rel. Industrial Commission vs. The Coffin Packing and Provision Company et al.

Mandamus. Writ issued and made peremptory.

76970. J. S. McCleary et al. as Trustees, etc., vs. Earl Wilson as Commissioner of Insurance.

Mandamus. Writ granted. Decree entered.

..... The People ex rel. Cochrane vs. Earl Wilson.

Quo Warranto. Judgment for plaintiff. Appeal taken.

79155. The People ex rel. Wm. Thomas vs. Wm. V. Roberts, et al.

Mandamus. Writ dismissed. Appeal to Supreme Court. No. 10515.

76690. The People ex rel. vs. Harry E. Mulnix.

Mandamus. Case dismissed. Agreed record filed in Supreme Court. No. 10292. Writ of Error dismissed.

..... The Omar Land & Cattle Company vs. The State Board of Stock Inspection Commissioners.

Money demand. Pending.

74444. The People vs. Henry Gebhardt et al.

Action on official bond. Demurrer overruled Dec. 30, 1922.

74446. The People vs. Thomas Keely et al.

Action on official bond. Demurrer overruled Dec. 30, 1922.

74445. The People vs. William J. Galligan et al.

Action on official bond. Tried to jury. Jury unable to agree on verdict. Set for retrial Feb. 13, 1923.

..... In the Matter of the Estate of Anton Schindelholz, deceased.

Construction of Inheritance Tax Statute. Judgment for State of Colorado.

**Adams County**

Union Pacific R. R. Co. vs. Moon, County Assessor.

Suit to recover taxes. Pending.

The People ex rel. Alice Adams Fulton vs. Geo. T. Bradley et al.,  
as members of Civil Service Commission.

Mandamus. Pending.

The People ex rel. William Kelly, et al. vs. Carl S. Milliken, Geo.  
T. Bradley et al.

Mandamus (Civil Service). Trans. to District Court City  
and County of Denver on writ of certiorari. Case tried. Judgment for respondent.

**Arapahoe County**

In re: Fred Lucas, as Receiver of The Denver Homes and Water  
Company, a corporation, The South Denver Water Company, a  
corporation, and The Arapahoe Water Supply Company, a corporation.

Castlewood Dam Case. Pending.

**Chaffee County**

The People ex rel. vs. The Colorado Cooperative Lettuce Growers'  
Association.

Application for appointment of receiver.

**Fremont County**

Petition of George Schmitt, alias George J. Schmitt, alias Albert  
Miller, for Writ of Habeas Corpus.

Writ denied. Remittitur issued.

**Las Animas County**

H. E. Abrams vs. P. J. Hamrock et al.

Suit for damages. Motion for new trial. Pending.

**Pitkin County**

Roaring Fork Electric Light etc. Co. vs. The Colorado Tax Commission.

To recover taxes. Second suit filed. Settled by county  
authorities. No report to Attorney General.

**Park County**

Antero and Lost Park Reservoir Company vs. County Commissioners of Park County.

The Colorado Tax Commission, intervenor. Judgment for defendants and intervenor. Appeal to Supreme Court. Briefs all in and case at issue.

**Pueblo County**

In the Matter of the Application of Mary Hunt, Ralph Hunt and Victor Hunt, for Writs of Habeas Corpus.

(State Hospital case.) Judgment of District Court accepted. Patients discharged.

**Otero County**

The Holly Sugar Corporation vs. Board of County Commissioners. Suit to recover taxes. Pending.

**Weld County**

4535. Union Pacific R. R. Co. vs. Robert Hanna et al.

Tax case. Coal reservation. Dismissed on motion of defendants and intervenor, The Colorado Tax Commission.

5035. The First National Bank of Johnstown vs. Board of County Commissioners.

To recover taxes. Pending—on decision of case in U. S. District Court, No. 7141.

5006. The Farmers & Merchants Bank of Evans vs. Same.

5007. The Farmers National Bank of Ault vs. Same.

5036. The First State Bank of Nunn vs. Same.

5005. The Farmers State Bank of Windsor vs. Same.

5003. The First National Bank of Ault vs. Same.

5032. The First National Bank of Windsor vs. Same.

5002. The First National Bank of Eaton vs. Same.

5009. The First National Bank of Gill vs. Same.

5004. The Eaton National Bank vs. Same.

5010. The Ft. Lupton State Bank vs. Same.

5000. The Greeley National Bank vs. Same.

5011. The Kersey State Bank vs. Same.

5008. The LaSalle State Bank vs. Board of County Commissioners.

5024. The Platteville National Bank vs. Same.

4000. The Union Bank of Greeley vs. Same.

5001. The Weld County Savings Bank vs. Same.

**SCHEDULE VI****WORKMEN'S COMPENSATION CASES**

January 11, 1921, to January 9, 1923

1.

Louise M. Weaver (Claimant) vs. Industrial Commission et al., District Court of Denver County.

Case remanded to the Commission by the Supreme Court for more specific findings: the case again appealed to the District Court and Supreme Court, and on July 3, 1922, the award of the Commission affirmed.

2.

John Billick (Claimant) vs. Industrial Commission of Colorado et al., Pueblo District Court.

Award of the Commission; cause remanded by the District Court for more specific findings.

3.

Colorado Fuel and Iron Company vs. Industrial Commission of Colorado and Maria Hernandez et al. (Claimant); Denver District Court.

Award of Commission reversed.

4.

Battista Ferrari et al. (Claimants) vs. Industrial Commission of Colorado, and the Colorado Fuel and Iron Company; Denver District Court, March 14, 1921.

Award of the Commission affirmed.

5.

Augusta Olsen Hall (Claimant) vs. Industrial Commission of Colorado et al.; Denver District Court.

This case was tried in the District Court and the Supreme Court, and on March 6, 1922, the award of the Commission was affirmed.

6.

Industrial Commission of Colorado vs. A. L. Bassett, El Paso District Court, September 27, 1920.

Judgment entered for Industrial Commission.

7.

London Guaranty & Accident Company vs. Industrial Commission of Colorado and T. G. Platt; Denver District Court, July 5, 1921.

Award of the Commission affirmed by Supreme Court.



8.

Industrial Commission of Colorado vs. J. J. Doyle; District Court Routt County, September 10, 1921.

Case dismissed, defendant complying with original award made by the Commission.

9.

Industrial Commission of Colorado vs. Sam Weiner et al.; Denver District Court, September 8, 1920.

Judgment rendered in favor of Commission for penalty for failure to comply with the award.

10.

The State Compensation Insurance Fund and the Camp Bird, Ltd., vs. Industrial Commission of Colorado and William N. Grenfel; Denver District Court, February 6, 1922.

Award of the Commission affirmed by Supreme Court, District Court reversed and award of the Industrial Commission affirmed by the Supreme Court.

11.

Mike Kokotovich (Claimant) vs. Industrial Commission et al.; Denver District Court, February 7, 1921.

Award of Commission affirmed by Supreme Court.

12.

Ocean Accident and Guaranty Corporation vs. Industrial Commission and Elizabeth Hrutkai et al. (Claimants); El Paso District Court, November 7, 1921.

Award of the Commission affirmed by Supreme Court.

13.

Ocean Accident and Guaranty Corporation et al. vs. Annetta N. Parks et al. (Claimants); Denver District Court on June 5, 1921.

Award of the Commission affirmed by the Supreme Court.

14.

London Guaranty and Accident Company vs. Industrial Commission of Colorado and John Short (Claimants); Denver District Court, June 7, 1921.

Award of the Commission reversed.

15.

Fannie Harper (Claimant) vs. Industrial Commission et al.; Denver District Court, February 7, 1921.

Award of the Commission affirmed.

16.

The Employers Mutual Insurance Company et al. vs. Industrial Commission of Colorado and Beverly L. Powell (Claimants); Denver District Court, June 6, 1921.

Award of the Commission affirmed by Supreme Court.

17.

The Employers Mutual Insurance Company et al. vs. Industrial Commission of Colorado and Frank Benke; Denver District Court, June 6, 1921.

Award of the Commission affirmed by the Supreme Court.

18.

Irma Picardi (Claimant) vs. Industrial Commission et al.; Denver District Court, July 5, 1921.

Award of the Commission affirmed by the Supreme Court.

19.

The Colorado Fuel and Iron Company vs. the Industrial Commission of Colorado and Ruperto Ornelas; Denver District Court, February 28, 1921.

Award of the Commission reversed.

20.

Industrial Commission of Colorado vs. James C. Hayes; District Court of Pueblo, December 22, 1921.

Directed verdict against the Industrial Commission.

21.

John Burke vs. Industrial Commission of Colorado and Mary D. Chadwick (Claimants); Denver District Court, November 7, 1921.

Award of the Industrial Commission reversed by the Supreme Court.

22.

Michael J. O'Brien (Claimant) vs. Industrial Commission of Colorado et al.; Denver District Court, November 28, 1921.

Award of the Commission affirmed.

23.

Industrial Commission of Colorado vs. A. Rosenberg; Denver District Court, May 31, 1921.

Case dismissed.

24.

Industrial Commission of Colorado vs. The Up-to-Date Mining Company; District Court of Boulder County, September 5, 1921.

Case dismissed at cost of defendant.

25.

Industrial Commission of Colorado vs. Amherst Mining Company; District Court of Clear Creek County, May 16, 1922.

Judgment entered in favor of Commission.

26.

Industrial Commission of Colorado vs. Chas. S. Coleman et al.; District Court of Saguache County, October 18, 1921.

Judgment entered for the Industrial Commission for \$1,250.

27.

Industrial Commission of Colorado vs. A. P. Deavor; District Court of Weld County, June 3, 1922.

December 21, 1922, judgment for Commission.

28.

The General Chemical Company and the Fidelity and Casualty Company of New York vs. Industrial Commission of Colorado and Emily N. Thomas; Denver District Court, January 7, 1922.

Cause dismissed by the Supreme Court for failure of insurance company to comply with Section 106, Workmen's Compensation Act, 1919.

29.

John Rogers, Jr. (Claimant), vs. Industrial Commission of Colorado et al.; Denver District Court, December 9, 1922.

Award of the Commission affirmed.

30.

The Colorado Fuel and Iron Company vs. Industrial Commission of Colorado and Celia S. Mondragon; Denver District Court, October 29, 1921.

Award of Commission affirmed.

31.

London Guaranty and Accident Company et al. vs. Industrial Commission of Colorado and Walter Redmond (Claimant), February 27, 1922.

Award of the Commission affirmed.

32.

Southern Surety Company and Lakewood Country Club vs. the Industrial Commission of Colorado and Joe Berry; Denver District Court, June 5, 1922.

Award of the Commission affirmed.

33.

Industrial Commission of Colorado vs. A. M. Conover; District Court Adams County.

Case dismissed.

34.

Industrial Commission of Colorado vs. The Colorado United Mines Company; District Court, Boulder County, November 9, 1921.

Judgment for plaintiff.

35.

London Guaranty and Accident Company et al. vs. the Industrial Commission of Colorado and Henry Petre (Claimant); Denver District Court, October 10, 1921.

Award of the Commission affirmed.

36.

Travelers Insurance Company et al. vs. Industrial Commission of Colorado, and Bernard Krantz (Claimant); Denver District Court, June 5, 1922.

Award of the Commission sustained by the Supreme Court. The Supreme Court sustained the right of the Commission in this case to prescribe a standard form of Workmen's Compensation Insurance policy.

37.

London Guaranty and Accident Company et al. vs. Industrial Commission of Colorado and Anna S. Bradley; Denver District Court, September 27, 1921.

Award of the Commission affirmed.

38.

Sophia James Pepas et al. (Claimants) vs. Industrial Commission of Colorado et al.; Denver District Court, January 9, 1922.

Judgment of District Court reversed by the Supreme Court. Award of the Commission affirmed.

39.

General Accident, Fire, and Life Insurance Corporation et al. vs. Industrial Commission of Colorado and Ralph McConnell; District Court Denver County, February 6, 1922.

District Court reversed the award of the Industrial Commission. Award affirmed by the Supreme Court.

40.

Industrial Commission of Colorado vs. R. E. L. Townsend; Denver District Court, March 30, 1922.

Judgment in favor the Industrial Commission for \$816.00.

41.

The Empire Zinc Company vs. the Industrial Commission of Colorado and Zuzane Zajac (Claimant); Denver District Court, April 3, 1922.

Award of the Commission affirmed by the Supreme Court.

42.

M. C. Crawford et al. vs. Industrial Commission of Colorado et al.; Denver District Court, May 1, 1922.

Supreme Court ordered award of the Commission remanded with instruction to make more specific findings.

43.

J. H. Holcomb vs. Industrial Commission of Colorado and Ollie Smith; District Court of Saguache County.

Case pending.

44.

Ben Creizler vs. Industrial Commission of Colorado and Walter T. Andrew; Denver District Court, October 18, 1922.

Award of the Commission affirmed by District Court. Case pending in the Supreme Court.

45.

London Guaranty and Accident Company et al. vs. Industrial Commission of Colorado and F. L. Richardson (Claimant); Denver District Court, October 2, 1922.

Award of the Commission affirmed by the Supreme Court.

46.

J. E. Landis (Claimant) vs. Industrial Commission of Colorado et al.; Denver District Court, May 22, 1922.

Award of the Commission affirmed.

47.

Industrial Commission of Colorado vs. County Commissioners of Conejos County; Denver District Court, May 30, 1922.

Case dismissed.

48.

Industrial Commission of Colorado vs. George Stow; Denver District Court.

Pending.

49.

Canon Reliance Coal Company and the Continental Casualty Company vs. Industrial Commission of Colorado and Mabel Seitz; Denver District Court, September 16, 1922.

Award of the Commission affirmed and reversed in part by the District Court. Affirmed in part by Supreme Court.

50.

Ben Falagradý (Claimant) et al. vs. Industrial Commission of Colorado et al.; Denver District Court, April 24, 1922.

Award of the Commission remanded with instructions to make more specific findings.

51.

Amelia A. Ellerman (Claimant) vs. Industrial Commission of Colorado et al.; Denver District Court, June 5, 1922.

Supreme Court reversed District Court and reversed the award of the Industrial Commission. Petition for rehearing pending. Petition for rehearing granted December 6, 1922.

52.

Walter B. Darracott (Claimant) vs. Industrial Commission of Colorado et al.; Denver District Court, April 26, 1922.

Award of the Commission affirmed.

53.

Harry Young (Claimant) vs. Industrial Commission of Colorado and the City of Pueblo; Denver District Court, November 13, 1922.

Remanded to the Industrial Commission to make more specific findings.

54.

Industrial Commission of Colorado vs. George McClellan; Denver District Court, July 12, 1922.

Case dismissed.



55.

Big Six Coal Company et al. vs. Industrial Commission and Ollie Cruthis (Claimant); Denver District Court, September 12, 1922.

District Court remanded the case to the Commission. Appeal taken by the Commission to the Supreme Court where on December 6, 1922, award of Commission was affirmed.

56.

Maria Fanganiello (Claimant) vs. Industrial Commission of Colorado et al.; Denver District Court, October 2, 1922.

Case remanded by Supreme Court to take further evidence.

57.

Industrial Commission of Colorado vs. Hireen Mining and Leasing Company; District Court of Clear Creek County, July 14, 1922.

Case dismissed.

58.

Travelers Insurance Company et al. vs. Industrial Commission of Colorado and Carolina Di Orio (Claimant); Denver District Court.

Trial had October 16, 1922. Case pending.

59.

The Aetna Life Insurance Company et al. vs. Industrial Commission of Colorado and Adelayde Picardy (Claimant); Denver District Court, July 27, 1922.

Award of the Commission affirmed.

60.

Industrial Commission of Colorado vs. Travelers Insurance Company; Denver District Court.

Case pending. In this case it is sought to inflict a penalty upon the insurance company for failing to comply with the policy prescribed by the Industrial Commission.

61.

Industrial Commission of Colorado vs. F. C. Magruder et al.; Denver District Court, November 20, 1922.

Judgment for Commission for \$342.59.

62.

United States Fidelity and Guaranty Company et al. vs. the Industrial Commission of Colorado and Fannie Martz (Claimants); Denver District Court, November 13, 1922.

Award of the Commission affirmed.

63.

Industrial Commission of Colorado vs. Metropolitan Window Cleaning Company: Denver District Court.

Pending.

64.

Colorado Fuel and Iron Company vs. Industrial Commission of Colorado and John Cundy (Claimant); Denver District Court.

Case pending.

65.

Maryland Casualty Company vs. Industrial Commission of Colorado and Rose Lewis (Claimant); Denver District Court, October 2, 1922.

Award of the Commission reversed and case appealed to the Supreme Court.

66.

M. C. Crawford et al. (Claimant) vs. Industrial Commission of Colorado et al.; Denver District Court, October 9, 1922.

Award of the Commission affirmed. Appeal taken to the Supreme Court.

67.

The Colorado Fuel and Iron Company vs. Industrial Commission of Colorado and Katherine Brautigan et al. (Claimants); Denver District Court.

Case pending.

68.

The Colorado Fuel and Iron Company vs. Industrial Commission of Colorado and Lawrence E. Burge (Claimants); Denver District Court.

Case pending.

69.

Jerry Hughes (Claimant) vs. Industrial Commission of Colorado et al.; Denver District Court.

Case pending.

70.

J. F. Depew vs. Industrial Commission of Colorado; Denver District Court.

Case pending.

71.

The Globe Indemnity Company et al. vs. Industrial Commission of Colorado and Charles L. Walker (Claimant); Denver District Court.

Case pending.

72.

Edna May Hunter et al. (Claimants) vs. Industrial Commission of Colorado et al.; District Court, Pueblo County, November 15, 1922.

Pending under advisement.

73.

Columbine Laundry et al. vs. Industrial Commission of Colorado and Anna Pederson et al. (Claimants); Denver District Court, December 16, 1922.

Award of Commission affirmed.

74.

James H. Andrews vs. Industrial Commission of Colorado and Elmer Bachman (Claimants); Denver District Court.

Case pending.

75.

Aetna Life Insurance Co. vs. Industrial Commission; Denver District Court, December 27, 1922. Insurance Company asked the temporary injunction against Commission from trying 500 or more cases upon a penalty.

Injunction denied and complaint dismissed.

76.

Travelers Insurance Co. vs. Industrial Commission; Denver District Court, December 27, 1922. Insurance Company asked the temporary injunction against Commission from trying 500 or more cases upon a penalty.

Injunction denied and complaint dismissed.

## SCHEDULE VII

### OIL TAX CASES

#### Adams County

People vs. J. A. Forsythe.

Suit filed. Defendant paid in full. Case dismissed.

People vs. J. A. Forsythe.

Pending on demurrer.

**Arapahoe County**

People vs. J. A. Forsythe.

Suit filed. Defendant paid in full. Suit dismissed.

People vs. J. A. Forsythe.

Pending on demurrer.

People vs. Hercules Oil Co.

Paid in full.

**Boulder County**

7845. People vs. V. S. Allen.

Pending taking of further testimony.

7910. People vs. V. S. Allen.

Dismissed.

8012. People vs. V. S. Allen.

Pending on demurrer.

People vs. Central Filling Station.

Paid in full.

**Douglas County**

886. People vs. J. A. Forsythe.

Defendant paid in full.

**Denver County**

76395. People vs. Forsythe Bros.

Case dismissed and suits filed in counties where business is being conducted.

People vs. Apex Refining Co.

Suit filed. Defendant paid after demurrer to complaint was overruled.

People vs. Harold Johnston.

In judgment, September 6, 1922.

73896. Henry J. Arnold vs. James Duce, State Oil Inspector, et al.

Suit for injunction. After much court proceeding the court sustained demurrer to complaint. Plaintiff dismissed case Nov. 11, 1921.

74665. People vs. Altitude Oil Co.

Judgment entered in this case for plaintiff on March 30, 1921. Case appealed to Colorado Supreme Court, where judgment was affirmed November 7, 1921. Rehearing denied December 5, 1921.

Writ of error sued out to U. S. Supreme Court. Case submitted to U. S. Supreme Court on October 3, 1922. Case dismissed on Motion of The People.

Judgment collected for:

Principal .....	\$8,353.65
Interest and Costs .....	1,123.20
Turned over to State Treasury.....	\$9,476.85

76352. People vs. O'Malley-Kelley Oil and Auto Supply Co.  
In judgment, May 16, 1922.
77184. People vs. O'Malley-Kelley Oil and A. S. Co.  
Set for trial by jury.
78886. People vs. O'Malley-Kelley Oil & A. S. Co.  
Set for hearing to jury on attachment.
75238. People vs. O'Malley-Kelley Oil & A. S. Co.  
Set for trial by jury.
74192. People vs. O'Malley-Kelley Oil & A. S. Co.  
Dismissed and filed over as No. 75238.
75296. People vs. Profit-Sharing Oil & Supply Co.  
Pending on demurrer.
76392. People vs. Profit-Sharing Oil & Supply Co.  
Pending on answer.
76393. People vs. Oberholtz.  
Paid in full. Case dismissed.
76393. People vs. Oberholtz.  
Amount paid. Case dismissed.
57295. People vs. Oberholtz.  
Amount paid. Case dismissed.
75216. People vs. Sommers Oil Company.  
Demurrer filed by defendant overruled. Amount paid. Case dismissed.
76262. People vs. Sommers Oil Company.  
Demurrer filed by defendant overruled. Amount paid. Case dismissed.
- People vs. Gates.  
Paid in full November 20, 1921.

### El Paso County

13368. People vs. W. B. Boardman et al.  
Pending on injunction. Payment pending.
- People vs. Ronnie Oil Company.  
Paid in full April 11, 1921.

13274. People vs. J. A. Forsythe.

Defendant paid after hearing on motion to make complaint more specific. Case dismissed.

People vs. Pikes Peak Petroleum Co.

Suit filed. Paid in full. Case dismissed.

12779. People vs. Mountain Tire & Gas Co.

In judgment. Paid in full.

### Larimer County

People vs. Riverside Ice & Storage Company.

Default taken June 9, 1922. Appealed to Supreme Court—

No. 10468. Supersedeas denied. Judgment affirmed. Remittitur issued to District Court of Larimer County. Pending.

4349. People vs. The Riverside Ice & Storage Co.

Default taken June 9, 1922. Appealed to Supreme Court—

No. 10469. Supersedeas denied. Judgment affirmed. Remittitur issued December 20, 1922. Pending.

4509. People vs. The Riverside Ice and Storage Co.

Pending on demurrer.

4560. People vs. L. J. Starkey.

Pending on demurrer.

People vs. Loveland Motor Co.

Defendant out of business and gone from Larimer County. Suit dismissed.

4287. People vs. The Riverside Ice & Storage Co.

In judgment.

4266. People vs. Loveland Motor Company.

Ready for judgment.

4508. People vs. Loveland Motor Company.

Demurrer under advisement by Bradfield, J.

People vs. V. S. Allen.

Pending on demurrer.

People vs. Giddings & Thayer.

Suit filed. Defendants paid. Suit dismissed January 22

1921.

4289. People vs. Frank C. Miller, as Northern Garage.

Ready for trial.

4343. People vs. Frank C. Miller, as Northern Garage.

Ready for trial.



**Logan County**

3329. People vs. Sterling Oil & Supply Co.  
Dismissed and refiled.
3404. People vs. Sterling Oil & Supply Co.  
In judgment November 14, 1922.
3276. People vs. J. B. McDill.  
In judgment November 14, 1922.
3403. People vs. J. B. McDill.  
In judgment November 14, 1922.
3299. People vs. W. M. Polk.  
Set for trial for December 21, 1922. Pending.
3706. People vs. W. M. Polk.  
Set for trial for December 21, 1922.
3405. People vs. W. M. Polk.  
Set for trial for December 21, 1922.
3542. People vs. J. A. Forsythe.  
Pending on demurrer to answer.

**Las Animas County**

- People vs. Hudness Oil Company.  
Paid in full May 9, 1921.

**Montrose County**

- People vs. Montrose Filling Station.  
Payment in full, after decision in Altitude Oil Case. Case dismissed.

**Morgan County**

4027. People vs. Donnen Oil Company.  
Paid in full. Case dismissed.
3915. People vs. O. H. McGrew.  
Pending answer.
3914. People vs. O. H. McGrew.  
Amount paid in full. Case dismissed.
4017. People vs. O. H. McGrew.  
Paid in full. Case dismissed.
- People vs. O. H. McGrew.  
Dismissed and re-filed.

4126. People vs. J. A. Forsythe.  
Amount paid in full. Case dismissed.
- People vs. Donnen Oil Company.  
Amount paid in full. Case dismissed.
- People vs. Warren Lumber Company.  
Amount paid in full. Case dismissed.

### **Otero County**

2824. People vs. Otero Petroleum Company.  
Paid in full. Case dismissed.
2864. People vs. Otero Petroleum Company.  
Paid in full. Case dismissed.
2920. People vs. Otero Petroleum Company.  
Paid in full. Case to be dismissed.
2863. People vs. Geo. I. Boyd Grain Company.  
Paid in full. Case dismissed.
2800. People vs. Shelton-Bailey Motor Supply Co.  
Paid in full by O. H. McGrew, Ft. Morgan.

### **Pueblo County**

16991. People vs. Jewel Oil Company.  
Pending on demurrer and settlement.
17067. People vs. Jewel Company, Inc.  
Pending on demurrer and settlement.
17183. People vs. Jewel Company, Inc.  
Pending on demurrer and settlement.
- People vs. Jewel Company, Inc.  
Pending on settlement.
- People vs. Arkansas Valley Petroleum Company.  
Paid in full.

### **Prowers County**

- People vs. Saylor Oil Company.  
Paid in full. Case dismissed.
- People vs. McLaughlin Oil Company.  
Paid in full. Case dismissed.

### **Sedgwick County**

862. People vs. John E. Spelts.  
In judgment.

People vs. John E. Spelts.

Judgment. Execution. Demand paid in full.

People vs. E. A. Carroll.

Paid in full. Case dismissed.

### **Washington County**

1287. People vs. J. A. Forsythe.

Pending on demurrer.

1214. People vs. J. A. Forsythe.

Paid in full. Case dismissed.

1415. People vs. J. A. Forsythe.

Paid in full. Case dismissed.

### **Weld County**

5053. People vs. C. S. Buchanan.

Ready for trial.

5213. People vs. C. S. Buchanan.

Ready for trial.

5618. People vs. C. S. Buchanan.

Pending on attachment proceedings.

4900. People vs. C. S. Buchanan.

Dismissed and re-filed.

5387. People vs. J. A. Forsythe.

Paid in full. Dismissed.

5386. People vs. J. A. Forsythe.

Paid in full. Dismissed.

People vs. Sherman Auto Company.

Paid in full. Dismissed.

### **Yuma County**

8161. People vs. J. A. Forsythe.

Paid in full. Case dismissed.

8162. People vs. J. A. Forsythe.

Paid in full. Case dismissed.

1213. People vs. J. A. Forsythe.

Paid in full. Case dismissed.

1923. People vs. J. A. Forsythe.

Pending on motion to strike parts of answer.



SCHEDULE VIII

Opinions and  
Syllabi of Opinions

Rendered During the Term of  
Attorney General Keyes

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1921-1922

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*NOTE: These syllabi are reported herein in the chronological order of the dates of opinions rendered. A copy of each opinion is on file in this office under a number corresponding with that of the syllabus.*





# Opinions and Syllabi of Opinions

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## 1. **TAXATION**

Senator O. E. Bannister, Jan. 11, 1921.

A bill for an Act exempting all new houses to be constructed during the next year, up to a certain value, from taxation would be unconstitutional.

Sec. 3, Art. X Const.; Sec. 6, Art. X Const.; Sec. 7, Art. XVIII Const.

County Commrs. v. Gunnison Co., 7 Colo., 467; Am. S. & R. Co. v. People, 34 Colo., 240.

## 2. **OFFICIAL BONDS**

Judge R. C. Rickel, Jan. 13, 1921.

The Clerk of County Court should file bond with Secretary of State, and certified copy of same with County Clerk and Recorder.

Sec. 561, R. S. 1908; Sec. 4679, R. S. 1908; Sec. 4583, R. S. 1908.

## 2A. **STATE BOARD OF HEALTH**

James A. Noonan, Auditor's Department, Jan. 14, 1921.

Chapter 57, Section 9, S. L. 1919, provides a continuing appropriation of \$8,500 annually to the State Board of Health.

## 3. **HIGHWAY COMMISSIONER**

**Opinion advising approval of Budget of Highway Commissioner.**

Hon. Oliver H. Shoup, Governor of Colorado, Jan. 20, 1921.

You have heretofore submitted to me for consideration as to its legality, the annual budget for the year 1921, heretofore prepared by the State Highway Commission and submitted to you for approval, pursuant to Section 5, Article V, of the Highway Law (Ch. 78, S. L. 1917, p. 268).

Section 5, Article II of that act makes it one of the duties of the Commission "To prepare and submit annually to the Governor, on or before the first day of January, a budget for the State Highway Department."

Section 5, first above mentioned, provides that the budget "shall show the amount of the State Highway Fund on hand, the amount of outstanding obligations against such fund, the *estimated amount of receipts* from all sources that will *become*

*available for such fund during the ensuing year, and the estimated amount to be expended for the various activities and projects proposed for the forthcoming year. The total estimated expenditures contemplated for all purposes of the State Highway Department for a given year shall not exceed the total estimated available fund."*

It will be noted that the statute thus requires the Commission to estimate the receipts that will become available *during the ensuing year*, and the contemplated expenditures must not exceed the estimated available fund.

The budget sets forth that there is available this year from the United States Government under the Federal Aid Road Act the sum of \$1,720,000 and that \$1,000,000 of this apportionment is to be met by the sale of bonds authorized by vote of the people, to be issued in 1921; and explanatory notes appended to the budget show that it is contemplated by the Commission that the remaining \$720,000 is to be met by the proceeds of such bonds, to be issued in 1922.

This \$720,000 should not be approved as an expenditure to be made during the current year. I understand, however, that if this available Federal fund is to be preserved, the Highway Department must prepare for approval projects covering the same prior to June 30th of this year; otherwise, the appropriation thereof would lapse and these moneys would be lost to the State, and that it was for the purpose of saving to the State this Federal Aid apportionment, and not with the intent of spending more than its current income, that the Commission has outlined Federal Aid projects covering the full apportionment.

In view of these facts, I think you would be warranted in approving the budget in so far as it provides for the expenditure of the current income, and in giving it your sanction also as an expression of the attitude, policy and intention of the Commission to meet in due season the requirements of the Federal Road Act, in order to conserve the Federal apportionment.

#### 4.

### MARRIAGES

A. R. Busko, Jan. 20, 1921.

A minister licensed in another state may perform marriage ceremonies in Colorado. R. S. 1908; Sec. 4170.

#### 5.

### CIVIL SERVICE

**Member of Civil Service Commission whose term of office has expired and for whom no successor has been appointed, may hold over until such successor is appointed; and may receive compensation as de facto officer.**

Hon. Arthur M. Stong, State Treasurer, Jan. 22, 1921.

In your letter of the 21st inst., you state that Mrs. Nancy Kirkland was appointed as a member of the State Civil Service

Commission on January 9, 1919, for the term of two years; that her term of office has expired, and that you have received no notice of the appointment of a successor. You ask whether or not you are authorized to continue the payment of salary to Mrs. Kirkland after the expiration of the term for which she was appointed.

I understand that no successor has in fact been appointed and that Mrs. Kirkland continues to discharge duties of the office.

Section 1 of Article XII of the State Constitution provides that:

“Every person holding any civil office under the state or any municipality therein, shall, unless removed according to law, exercise the duties of such office until his successor is duly qualified; but this shall not apply to members of the general assembly, nor to members of any board or assembly, two or more of whom are elected at the same time.”

The Civil Service Amendment (Sec. 13, Art. XII), under which Mrs. Kirkland was appointed to hold for two years, must be construed in connection with the provision above quoted in like manner as if the two sections had both been originally written in the constitution. (People, ex. rel. vs. Field, 66 Colo. 370.)

It follows that Mrs. Kirkland may lawfully hold over until her successor is duly qualified.

In People, ex rel. vs. Ried, 11 Colo., 140, our Supreme Court states that a public officer holding over continues to be the *de jure* as well as the *de facto* incumbent of the office.

A public officer lawfully holding over is entitled to receive the compensation attached to the office until his successor is chosen and qualified.

See: Mechem on Public Officers, Sec. 869; Throop on Public Officers, Sec. 335; State, ex rel. vs. Thompson, 38 Mo. 192.

I am therefore of the opinion that Mrs. Kirkland is entitled to receive the salary of the office until her successor is appointed and duly qualified, provided, of course, that she continues in the meantime to perform the duties of the office.

## 6. PAUPERS

W. E. Higinbotham, Jan. 22, 1921.

Paupers must be supported by the county in which they become chargeable.

## 7. ESCHEAT FUNDS

J. Arthur Phelps, County Attorney, Pueblo, Colo.

All escheat funds should be delivered to the State Treasurer.

**8. ESTATES—ESCHEAT**

Hon. A. M. Stong, State Treasurer, Feb. 3, 1921.

When money is paid into State Treasury under the escheat statute and invested in interest bearing bonds, and heirs are later discovered, the proceeds from the sale of the bonds and the interest actually accrued from the investment should be distributed among the heirs.

“Balances” construed. Ch. 81, S. L. 1913.

**9. INSURANCE**

Commissioner of Insurance, Feb. 9, 1921.

An insurance company cannot be organized in Colorado to do a marine insurance business, but can be organized to insure against risks of inland navigation.

**10. INSURANCE**

Commissioner of Insurance, Feb. 9, 1921.

There is nothing illegal in the payment of an insurance premium by one person for another.

Insurance policies may legally be given to customers by merchants.

**11. COUNTY OFFICERS**

J. Paul Hill, Feb. 14, 1921.

A county judge may lawfully appoint himself clerk of his court and collect the salary of that position in addition to his salary as county judge.

Sec. 1561, R. S. 1908; Sec. 2, Ch. 65, S. L. 1913; Sec. 6297, R. S. 1908.

**12. COUNTY OFFICERS**

C. E. Dresback, Feb. 15, 1921.

County clerk and recorder must accept for record legal documents in a foreign language, without translation of same being filed also, except where such instruments are executed in a foreign country.

Sec. 698, R. S. 1908.

**13. INSURANCE**

Insurance Commissioner, Feb. 18, 1921.

A company having as its sole assets stock in insurance companies is not doing an insurance business.



## 14.

## COUNTY OFFICERS

Hon. Oliver H. Shoup, Governor of Colorado, Feb. 18, 1921.

**When two county commissioners were duly elected, qualified and entered upon their duties, but failed to file their bonds, or had them approved by the wrong officer, no vacancy exists in the county board, and the two commissioners are entitled to hold office, as the requirement in the statute is directory, not mandatory.**

You have submitted to this office, certain questions contained in a letter dated February 15, 1921, addressed to you from Isaac Pelton, Esq., County Attorney of Washington County, as to whether vacancies exist in the Board of County Commissioners of said county, under the following state of facts:

Mr. Homer Evans and Mr. R. M. Buckmaster are now acting as members of said board. Mr. Evans was elected at the regular November election in 1918 for the term of four years. His certificate of election was duly issued by the County Clerk. He took his oath of office December 5, 1918. His official bond was executed and filed on or before the 8th day of January 1919, and prior to the commencement of his term, but through an oversight it was approved by the Board of County Commissioners. He entered upon the duties of his office on the 8th day of January, 1919, and ever since said date he has continued to perform said duties and is now acting as such Commissioner. On the 20th day of January, 1921, it was discovered that the bond should have been approved by the District Judge, and it was then approved by the District Judge, and the error corrected.

Mr. Buckmaster was elected at the general election in November 1916, for the term of four years, qualified and acted as such Commissioner until the end of his term. At the regular November election, 1920, he was re-elected for a term of four years to succeed himself. His certificate of election was issued by the County Clerk and he took his oath of office January 3, 1921, and thereafter entered upon the duties of his office. His official bond was executed, the bill for said bond was approved and paid, and the bond was left with the County Attorney for filing with the County Clerk. Through some inadvertence or oversight, the bond was not filed until January 24, 1921, on which date the district judge duly approved the same. He has been regularly performing the duties of his office since the beginning of his term and is now acting as such Commissioner.

Some question has arisen as to the title of the two men mentioned, to the offices they are now holding.

The specific inquiries made by Mr. Pelton are as follows:

First. Are these two offices, in law, now vacant in the county of Washington?

Second. If the offices are not vacant, would they be so held, on a proper action to determine the question, being brought, notwithstanding the bonds and oath have been executed, approved and filed prior to the bringing of such action?

The determination of the questions here presented, involves the consideration of certain constitutional and statutory provisions relating thereto:

Article XII, Section 1 of our State Constitution provides:

“Every person holding any civil office under the state or any municipality therein, shall, unless removed according to law, exercise the duties of such office until his successor is duly qualified. but this shall not apply to members of the general assembly, nor to members of any board or assembly, two or more of whom are elected at the same time. \* \* \*”

Article XIV, Section 9 of the State Constitution reads:

“In case of a vacancy occurring in the office of county commissioner, the governor shall fill the same by appointment; and in case of a vacancy in any other county office, or in any precinct office, the board of county commissioners shall fill the same by appointment; and the person appointed shall hold the office until the next general election, or until the vacancy be filled by election according to law.”

A member of the board of county commissioners is a county officer. But prior to the Act of 1881 county commissioners were not required to give bonds. (People vs. District Court, 18 Colo. 293, 297.)

The statutes pertinent to this inquiry are as follows:

By Section 1244, R. S. of 1908, a county commissioner is now required to execute a bond.

Section 1246, R. S. of 1908, provides:

“Whenever any county commissioner shall be elected or appointed in any county of this state, he shall give such bond and procure the same to be approved before entering upon the duties of his office. \* \* \*”

Section 1248, R. S. 1908, reads:

“Said bond when approved by the judge of the district court shall be filed by the clerk or recorder of such county and shall be recorded by him in the records of said county.”



Section 1353, R. S. of 1908, provides:

“Every county officer named in this article shall, before entering upon the duties of his office, on or before the day of the commencement of the term for which he was elected, execute and deposit his official bond, as prescribed by law; and any such officer shall also take and subscribe the oath of office prescribed by law, before some officer authorized to administer oaths, and deposit the same with his official bond to be filed and preserved therewith.”

Section 1359 R. S. 1908, provides:

“Every county office shall become vacant, on the happening of either of the following events, before the expiration of the term of office.”

(The first five paragraphs and the seventh paragraph of said section are not applicable and are omitted.)

But the sixth paragraph of said section reads:

“His refusal or neglect to take his oath of office, or to give or renew his official bond, or to deposit such oath and bond within the time prescribed by law.”

Statutes or particular provisions thereof may be either mandatory or directory.

The first question to be determined is, are the foregoing statutes directory or mandatory?

The answer to this question is not free from difficulty for the reason that the authorities are conflicting, and we have found no direct adjudication of the precise point by our State Supreme Court. However, we have examined the decisions upon this subject in other states having similar statutes, and also the leading text books.

In California, it has been held that a statute providing that an office becomes vacant upon the happening of certain events, one of which is the failure to file a bond within the time prescribed, is mandatory, causing a forfeiture of the office if the bond is not filed within that time.

People vs. Perkins, 85 Cal. 509; Payne vs. San Francisco, 3 Cal. 122.

So in Florida the failure to give bond within the thirty days specified by statute was held not to be cured by performance nearly a year afterward under a statute declaring that for such failure the office should “be deemed vacant.”

Re Attorney General, 14 Fla. 277.

And in Virginia a statute requiring an officer to qualify between the time of his election and the beginning of his term of office, is held mandatory, and a qualification on the day the term begins is held too late.

Johnson vs. Mann, 77 Va. 265.

In Mississippi under a statue providing that an "office shall thereby become vacant," if an officer fails to give a new bond when required by the proper officers, it was held that no steps to declare the office vacant were necessary to relieve the sureties on his old bond.

Bennett vs. State, 58 Miss. 556.

Again, in Arkansas where a statute provided that a person should "forfeit his right to the office" by failure to give bond within a specified time, and made it the duty of a clerk to notify the governor of such default and of the latter immediately to appoint a person to fill the vacancy, it was held too late to file a bond after the failure to file it within a specified time had been certified to the governor and an appointment made by him.

Falconer vs. Shores, 37 Ark. 386.

Also, in Kansas under a statute substantially the same as ours, it was held that the failure of a county clerk elect to file his official oath and bond with the county treasurer within twenty days after the commencement of the term for which he was elected, vacates his office.

The State ex. rel. vs. Matheny, 7 Kans. 327, 330.

This case was decided in 1871, without citation of authorities and without any discussion of the general rules respecting directory and mandatory statutes, the effect of which is to deprive a man of his office to which he was elected by the people, regardless of the reasons for a failure to file a bond within the prescribed time, and without an opportunity to be heard.

Subsequent to the decision in the Kansas Case (The State vs. Matheny supra) the statute was changed so as to provide that if the officer elect "shall refuse or neglect without sufficient cause" to qualify within a certain time, the office should become vacant. And, in a later case under the statute, so amended, it was declared that the officer had a right to show that he had sufficient cause for failing to qualify within the time prescribed by law.

Carpenter vs. Titus, 33 Kan. 7.

While it will be observed that some of the states favor the mandatory rule, the weight of authority is the other way. In the case of Stocking vs. State, 7 Ind. 326, it was held that the question whether an office is, or is not vacant is intrinsically a judicial one and that the Legislature could not, even by an express statute create a vacancy in a constitutional office.

In Colorado, a county commissioner is a constitutional office.  
(Article XIV, Section 6, Colo. Constitution.)

There is a long line of cases that hold that where a statute requires a bond to be executed within a certain number of days, it is merely directory, and the bond may be lawfully filed on a subsequent day.

Duntley vs. Davis, 42 Hun. (N. Y.) 229; McRoberts vs. Winant, 15 Abb. Pr. N. S. 210; People vs. Holley, 12 Wend. 481; Com. vs. Read, 2 Ashm. (Pa.) 261; State vs. Churchill, 41 Mo. 41; State vs. Texas Co. Ct., 44 Mo. 230; Kearney vs. Andrews, 10 N. J. Eq. 70; State vs. Porter, 7 Ind. 204; Smith vs. Cronkhite, 8 Ind. 134; State vs. Peck, 30 La. Ann. 280.

We shall not attempt a review of all the cases, but wish to briefly call attention to the leading authorities which show that almost universally such statutory provisions have been held to be directory.

Mechem on Public Officers, Section 265, lays down the general doctrine as follows:

“Statutes usually directory and not mandatory. The statutes requiring a bond to be given ordinarily prescribe that it shall be given within a fixed time after the officers election or appointment. These provisions as to time, though often couched in the most explicit language, are usually construed to be directory and not mandatory.”

Section 266 of the same work reads:

“A failure to give bond within the time prescribed does not, therefore, *ipso facto* work a forfeiture. *A fortiori* is this so, when the failure was through no fault of the officer.

Even though the statute expressly provide that upon a failure to give the bond within the time prescribed, the office shall be deemed vacant and may be filled by appointment, it is generally held that the default is a ground for forfeiture only, and not a forfeiture *ipso facto*, and that if, notwithstanding his default, the state or other power sees fit to excuse the delinquency by granting the officer his commission, the defects of his title are cured, and it is converted into a title *de jure*, having relation back to the time of his election or appointment.”

Throop on Public Officers, Section 173, citing a long list of cases, makes the following definite statement:

“Where a statute fixes the time within which the official oath must be taken, or the official bond

given, the weight of the American authorities is decidedly in support of the doctrine, that the provision respecting the time is directory, although the statute declares that the office is forfeited by the default; and that unless the statute expressly declares that the failure to take the oath or give the bond, by the time prescribed, *ipso facto* vacates the office, the oath may be taken and the bond given at any time afterwards before judgment of ouster upon an information in the nature of a *quo warranto*, or other legal declaration that the office is thereby vacated. \* \* \* .

And it has been held that where the statute declares that an office shall become vacant, by the failure of the officer to renew his bond annually, his failure so to do does not vacate his office, without judgment of ouster or forfeiture; and that a subsequent compliance with the statute will cure the defect, and prevent a judgment of forfeiture in proceedings for that purpose."

The same doctrine is also laid down in 23 A. & E. Ency. of Law (2nd Ed.) at page 357 as follows:

"Statutes prescribing the time within which an official oath shall be taken or a bond given or filed, are generally held to be directory only, and a failure to comply therewith does not *ipso facto* forfeit the office, and if the officer subsequently and before the commencement of proceedings to forfeit the office complies with the requirements of the statute, he is entitled to the office. Such omission at the utmost merely affords a ground for forfeiture in direct proceedings therefor.

"In some instances the statutes prescribing the time within which the officer must qualify also provide that the office shall be deemed or become vacant on the refusal, failure or neglect of the officer to give bond or take the oath within the time prescribed. In some jurisdictions such statutes are regarded as directory only. And if the officer qualifies before proceedings are commenced to oust him from the office though after the prescribed time he will be held to be entitled to the office. The failure to qualify is, in such jurisdictions, regarded merely as a ground of forfeiture, which may be waived."

The views expressed by said authors are supported by a great many adjudicated cases. It would extend this opinion beyond reasonable limits to undertake to cite all of them, and we deem it unnecessary to do so. However, we desire to refer to some of them.



In *Com. ex. rel. vs. Slifer*, 25 Pa. St. 23, an officer omitted to file bond when the law required that he shall do so before entering on the duties of his office, it was held that such omission does not thereby forfeit his office, which he has entered upon and duly exercised, but he may file such bond when objection is made to the omission.

A statutory provision that an office shall become vacant "on failure to furnish bond within a specified time is held to be directory, and may be sufficiently complied with by furnishing the bond after that time.

*Knox Co. Com'rs. vs. Johnson*, 24 Ind. 145; *State vs. Colvig*, 15 Ore. 57; *Sprowl vs. Lawrence*, 33 Ala. 674; *State vs. Falconer*, 44 Ala. 696; *State vs. Ely*, 43 Ala. 568.

The same is true where the provision is that a person in default shall be "deemed to have refused" his office, or that the "office shall become vacant."

*Cawley vs. People*, 95 Ill. 249; *Chicago vs. Gage*, 95 Ill. 593.

In the last case cited it was held that if the officer files his bond strictly in time, his right and title to the office are indefeasible. If he files it afterwards, and it be accepted and approved, his right and title thereupon become equally indefeasible. The Court said:

"Gage derived his title to the office from the election. The law does not favor forfeitures, and 'in enforcing forfeitures courts should never search for that construction of language which must produce a forfeiture, when it will bear another reasonable construction.' "

And a statute which says that an "office shall be deemed absolutely vacant" on failure to file a bond whether a specified time, was held not to vacate the office *ipso facto* by such failure, but merely to make it a cause of forfeiture.

*State vs. Toomer*, 7 Rich. L. (S. C.) 216.

Likewise a statute providing that a person shall "forfeit the office" to which he may have been elected by acting therein without having given the required bond, does not make the office vacant without a proceeding to declare it so where such cause of forfeiture exists.

*Foot vs. Stiles*, 57 N. Y. 399; *Cronin vs. Stoddard*, 97 N. Y. 271.

In *Paxton vs. State*, 59 Neb. 460, it was held that although a vacancy in an office may be created by failure to file the required bond within the time fixed by the statute, the state may waive its right to oust the incumbent and elect to deal with him as entitled to the office.

See also *Launtz vs. The People*, 113 Ill. 137, 144.

And one elected a justice of the peace who entered upon the duties of the office, but neglected to file his oath of office and bond until five days after the required time was held a *de facto* officer although a statute provided that every office should become vacant on the refusal or neglect to take the oath of office, or to give an official bond, or to deposit such oath or bond within the time prescribed by law.

*People vs. Payment*, 109 Mich. 553.

In the case of the State of Washington vs. Ruff, the court said:

“But under our statute it is the election which gives the right to the office, and the qualification is only an incidental requirement for the protection of the public. If the provisions for such qualification are not timely complied with the public can protect itself by declaring a vacancy, and filling the same by appointment; but until such acts have been done the force of the election has not been exhausted, and, upon a compliance with the incidental duty of qualification is given full force.”

16 L. R. A. 140 and note.

In conclusion, it is our opinion that in the circumstances of the two cases now under discussion, according to the weight of authority as set forth by standard text writers, and the cases cited and quoted from, that at this time no vacancy exists in the Board of County Commissioners of Washington County, and that Evans and Buckmaster are entitled to hold the offices to which they have been elected.

## 15.

## ELECTIONS

A. R. Beardsley, Feb. 21, 1921.

Where no political party has made any assembly nominations for offices for coming city election, and no nominations have been made by petition, and time has elapsed for making such nominations, it probably would not be necessary to hold a primary election.

In view of specific duties imposed by Primary Law, refusal or neglect to hold primary election is discouraged.

## 16.

## OFFICERS

W. E. Higinbotham, Feb. 25, 1922.

A person who is not a resident of the State cannot act as town marshal in Colorado.



**17. APPROPRIATIONS**

David P. Howard, March 1, 1921.

It would be proper to provide in the Long Appropriation Bill that appropriations for various departments of state be limited and payable out of special funds in hands of State Treasurer.

Ch. 39, S. L. 1919, p. 186.

**18. COUNTY OFFICERS—COMPENSATION**

Charles J. Moynihan, March 2, 1921.

A county health officer is entitled to receive compensation for services performed, pursuant to Sec. 5073, R. S. 1908.

Secs. 5073 and 5074, R. S. 1908.

**19. MOTOR VEHICLES**

B. J. Ragatz, March 2, 1921.

Chattel mortgages and Bills of Sale given upon foreclosure thereof, are assignments within the meaning of the Auto Theft Law.

Ch. 7, Secs. 6 & 7, S. L. 1919, Extra Session.

Hart v. Hubbard, 41 Colo. 505.

**20. HIGHWAYS**

T. J. Erhart, March 2, 1921.

The Highway Department is justified in requiring bonds from contractors aggregating 50% of amount involved in respective contracts, instead of 100%, as heretofore the practice, if such bond adequately assures completion of contract and payment for material and labor.

**21. COUNTY COMMISSIONERS**

F. D. Hart, County Clerk, March 2, 1921.

Action of county commissioners approving claims is not legal unless they are acting as a board.

**22. INTOXICATING LIQUORS**

J. Elzia Johnston, District Attorney, March 5, 1921.

The penalty section of Ch. 98, S. L. 1915, applies to Ch. 141, S. L. 1919.

See also Ch. 82, S. L. 1917.

**23. INSURANCE**

W. R. Thomas, March 7, 1921.

There is no provision of law under which the Insurance Commissioner can compel an insurance company to pay a debt.

**23A. STATE BOARD OF STOCK INSPECTORS**

E. McCrillis, Secretary, March 7, 1921.

This Board is a statutory body and possesses such powers only as are expressly conferred, or reasonably implied. Has no authority to reimburse a commission company for losses sustained in a sale of cattle.

**24. TOWNS AND CITIES**

T. Lee Witcher, District Attorney, March 10, 1921.

Procedure for reviving the organization of a town which has held no election for a number of years, so that no officers are known,—outlined.

M. A. S. 1912, Sec. 7466; People v. Curley, 5 Colo. 413.

M. A. S. 1912, Sec. 7458.

M. A. S. 1912, Sec. 7341.

**25. ELECTIONS**

L. C. Elver, March 10, 1921.

A bulletin issued at irregular intervals in the interest of a religious denomination and not of general circulation is not a "newspaper" within the meaning of Sec. 2144, R. S. 1908, dealing with elections.

**26. TOWNS AND CITIES**

William Knies, March 10, 1921.

The board of trustees of an incorporated town may pass an ordinance imposing a poll tax.

Sec. 6527, R. S. 1908, paragraph 2.

**27. ENGINEERS—EXAMINERS**

St. Bd. Engineers Examrs., March 11, 1921.

Members of St. Board of Engineers Examiners are entitled to a license for the full period for which they are appointed as members.

Members whose terms expire will hold over until Governor appoints new members from list of persons from which the statute requires appointments to be made.

Ch. 185, S. L. 1919.

**28. INDUSTRIAL COMMISSION**

Industrial Commission, March 12, 1921.

The Federal Transportation Act of 1920 ousts the jurisdiction of the Industrial Commission of Colorado over the controversy existing between the employes of the Denver & Salt Lake Railway and the Receiver of that road.

**29. COUNTY OFFICERS**

Claude D. Walrod, County Attorney, March 12, 1921.

Where the board of county commissioners has the power to approve the compensation of assistants to various county officers, it is in effect the absolute and final arbiter on such compensation.

Ch. 109, S. L. 1919; Sec. 1275, R. S. 1908.

Merwin v. Boulder Co., 29 Colo. 179, 180.

**30. COUNTY OFFICERS**

Hon. J. S. Larabee, County Judge, March 17, 1921.

Sec. 1561, R. S. 1908 provides that each judge of the county court may appoint a clerk whose powers and duties shall be similar to those of the clerk of the district court. This law is still in force.

Sec. 1561, R. S. 1908; Sec. 2, Ch. 65, S. L. 1913; Sec. 8, Ch. 108, S. L. 1919.

**31. PUBLIC UTILITIES COMMISSION**

Public Utilities Com., March 18, 1921.

It is within the power of the Public Utilities Commission to enter an order directing the Federal Receiver of the D. & R. G. R. R. Co. to construct a railroad station at Ft. Garland, without entering the order through or applying for permission to enter the order, to the U. S. District Court, the court appointing the receiver.

**32. FEES AND SALARIES**

C. N. Smith, March 22, 1921.

Sec. 6558, R. S. 1908, providing for the allowance by cities, counties and boards of trustees of certain extra compensation to county assessors, has been repealed by implication.

Walpole v. Pueblo, 12 C. A. 151.

Sec. 6658, R. S. 1908; Sec. 642, G. S. 1883; Sec. 13, p. 312, S. L. 1899; Sec. 9, Ch. 134, S. L. 1899; Sec. 1, Ch. 162, S. L. 1903; Sec. 1, Ch. 181, S. L. 1907; Sec. 2574, R. S. 1908; Sec. 1, Ch. 113, S. L. 1917; Sec. 5, Ch. 109, S. L. 1919.

**33. RECALL**

H. H. Moran, March 23, 1921.

Recall petition should not be circulated or filed against an officer until he has actually held his office for at least six months by virtue of his last election thereto.

Sec. 4, Art. XXI, Constitution.

**34. INSANE PERSONS**

Hon. W. P. Kinney, County Judge, March 23, 1921.

Claim of Colorado State Hospital against the estate of an insane person is probably a preferential claim of the fifth class.

Sec. 9, Ch. 70, S. L. 1919.

**35. ELECTIONS**

W. E. Higinbotham, March 23, 1921.

The Absent Voters' Act does not apply to municipal elections.  
Ch. 76, S. L. 1915.

**36. ELECTIONS**

Geo. D. Criley, March 23, 1921.

The words "last election" in Sec. 2151, R. S. 1908, includes the general election of November.

Sec. 2151, R. S. 1908.

**37. NEWSPAPERS**

A. M. Stong, March 24, 1921.

From authorities cited it seems clear that a newspaper which advocates consistently and regularly the principles of a political party, although it may not support every candidate thereof, is a newspaper having a political faith within the meaning of Art. XXIII of the Constitution.

A newspaper which supports only the principles of its proprietors, or supports whichever party seems at the time to merit its support and operates as an "independent newspaper" is not a newspaper having a political faith.

Two newspapers are of opposite faith if they advocate the principles of different parties.

**38. MOTOR VEHICLES**

Carl S. Milliken, Mar. 28, 1921.

Dealers' license numbers may be issued only for cars which the dealer has for sale or other disposition in the course of his busi-

ness, and does not include vehicles operated for hire, such as taxicabs, cars used for dealers' private use, or service cars.

Sec. 8, Ch. 161, S. L. 1919; Sec. 1, same chapter.

### 39. **SOLDIERS' AND SAILORS' HOME**

E. Fitzsimmons, March 28, 1921.

Veterans of Spanish-American war may be admitted to Colorado State Soldiers' and Sailors' Home, under Sec. 6037, as amended by Ch. 147, p. 413, S. L. 1915.

### 40. **FEES AND SALARIES**

Geo. Hetherington, March 29, 1921.

A county treasurer is not entitled to charge 1% or any other fee for handling the proceeds from sale of school bonds.

### 41. **CIVIL SERVICE**

Hon. O. H. Shoup, Mar. 30, 1921.

Absence of an appropriation in Long Appropriation Bill, for State Civil Service Commissioners will not affect status of commissioners, since they are provided for by a continuing appropriation. Query as to the salary of the Secretary of the Commission.

Art. XII, Sec. 13, Ch. 20, S. L. 1919; Sec. 10, Ch. 20, S. L. 1919.

### 42. **CORPORATIONS**

Hon. Carl S. Milliken, March 31, 1922.

A director of a corporation may file the required annual report without paying the delinquent flat tax, for the reason that such filing would be made by the director individually, and would not be considered as a filing made by the corporation.

### 43. **CHATTEL MORTGAGES**

Robt. B. Knox, April 1, 1921.

Where no fraud is charged an acknowledgment of chattel mortgage may be effectually taken and certified by the cashier of a bank which is the mortgagee.

Babbitt v. Bent County Bank, 50 Colo., 260.

### 44. **STATE FUNDS**

Hon. A. M. Stong, State Treasurer, April 2, 1921.

Upon direction of the State Board of Land Commissioners, the Treasurer is authorized to invest the Public School Income Fund



in interest-bearing state warrants, provided that there is reasonable certainty that said warrants will be redeemed prior to the time said funds are required to be distributed under Sec. 5887.

Sec. 5887, R. S. 1908; Sec. 1, Ch. 122, S. L. 1917; Sec. 1, Ch. 203, S. L. 1919.

#### 45. COUNTY OFFICERS

C. W. Elsner, April 5, 1921.

The County Treasurer is not custodian of moneys received from the sale of School Bonds

S. L. 1909, p. 496.

Treasurer of School District is custodian of such moneys.

S. L. 1919, Ch. 182.

#### 46. COURTS OF RECORD

Carra J. Estes, April 6, 1921.

Chapter 88, S. L. 1921, relating to court fees does not apply to fees charged by clerks of courts of record in criminal cases, nor to adjudication of water rights. Citing cases.

#### 47. MOTOR VEHICLES

Hon. Carl S. Milliken, April 6, 1922.

Garage-keepers may require patrons to sign contracts to the effect that the garage owner shall not be liable for loss by fire or theft of the automobiles for which the check is given. But if an automobile stored with such a garage keeper is burned or stolen by reason of his failure to exercise reasonable care and diligence, he is liable notwithstanding such contract.

Public Warehouse Co. v. Munger, 20 C. A. 56.

#### 48. FEES AND SALARIES

E. A. Jackson, April 8, 1922.

Chapter 122, S. L. 1921, relating to fees, does not amend Sec. 13, Ch. 43, S. L. 1917, relating to fees for filing and indexing mortgages, except as it might relate to the City and County of Denver.

S. B. No. 15; Sec. 2538, R. S. 1908; Sec. 13, Ch. 43, S. L. 1917.

#### 49. MOTOR VEHICLES

Carl S. Milliken, Sec'y of State, April 8, 1921.

A person engaged in the business of selling accessories for automobiles is a dealer as defined by Section 1, Ch. 7, S. L. 1919 (Extra Sess.).



**50. COUNTY OFFICERS**

Hon. J. H. Patterson, County Judge, April 9, 1921.

In counties having a population of more than 15,000 a county judge may appoint a probation officer whose salary shall be fixed by the county commissioners.

Sec. 593, R. S. 1908.

Merwin v. Boulder County, 29 Colo., 169, 180.

**51. INSURANCE**

Earl Wilson, Insurance Commr., April 12, 1921.

A domestic insurance company is not authorized to invest its funds in time certificates of deposit issued by banking institutions.

**52. GOVERNOR—VETO POWER**

It is within the province of the Governor to veto the entire item relative to the appropriation of an amount for an "Investigator (male)" for the State Board of Charities and Corrections, (but not the word "male," therein contained) and allow the rest to stand.

Honorable Oliver H. Shoup, Governor of Colorado, April 12, 1921.

You have directed my attention to the fact that the General Appropriation Bill, recently passed by the General Assembly, contains an appropriation of a specific amount for an "investigator (male)" for the State Board of Charities and Corrections, and with reference to this item you have requested my opinion as to whether or not you could veto the word "male" in said item, with the result that the appropriation would stand as for an Investigator without limitation as to sex.

The Constitution provides that

"The Governor shall have power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items, and the part or parts of the bill approved shall be law, and the item or items disapproved shall be void, unless enacted in manner following: If the general assembly be in session, he shall transmit to the house in which the bill originated a copy of the item or items thereof disapproved, together with his objections thereto, and the items objected to shall be separately reconsidered, and each item shall then take the same course as is prescribed for the passage of bills over the executive veto."

Art. IV, Sec. 12, Colo. Const

The question to be determined is the meaning of the word "item" as used in the above constitutional provision.

Speaking with reference to the object of this part of the constitution, the Supreme Court of this State has said:

“The governor is thereby empowered to disapprove of any item or items contained in such appropriations, and to approve the residue of the bill. This shows a clear purpose to invest the executive with discretion to save such appropriations as are necessary to defray the expenses of the government, without the danger of incumbering or defeating them by excessive or improvident expenditures.”

In *Re Appropriations*, 13 Colo. 327.

Thus, the court evidently regarded the word “item” as having particular reference to a sum of money rather than to a word or phrase used in defining the purpose of the appropriation.

The word “item” as used in a similar provision contained in the Constitution of Illinois, has been defined by the Supreme Court of that State as follows:

“The word ‘item’ is in common use and well understood as a separate entry in an account or schedule, or a separate particular in an enumeration of a total which is separate and distinct from the other particulars or entries, and the items vetoed by the Governor come within that meaning.”

*People v. Brady*, 277 Ill. 131.

The Supreme Court of Mississippi, in construing a similar constitutional provision, held that the governor could not veto any of that part of an appropriation bill which defined the purpose for which the appropriation was made and allow the appropriation itself to stand. In the course of its opinion the Court said:

“And after all and despite the pragmatic utterances of political doctrinaires, the executive, in every republican form of government, has only a qualified and destructive legislative function and never creative legislative power. If the governor may select, dissect, and dissever, where is the limit of his right? Must it be a sentence or a clause or a word? Must it be a section, or any part of a section, that may meet with executive disapprobation? May the governor transform a conditional or a contingent appropriation into an absolute one in disregard and defiance of the legislative will? That would be the enactment of law by executive authority without the concurrence of the legislative will and in the face of it.”

*State v. Holder*, 76 Miss. 181.

The State of Arizona has a similar constitutional provision, and, speaking with reference to the meaning of the word “item” therein used, the Supreme Court of that State said:

“ ‘Item’ therefore, is used synonymously with ‘subject,’ ‘distinct or separate parts’ and an objection and disapproval by the Governor of an item or several items of appropriations of money has reference to the distinct subject or part for which the appropriation is made and all its incidents.”

Callaghan v. Boyce, 17 Ariz. 458.

I must therefore advise you that, while in my opinion it would be within your province to veto the entire item in question, you could not veto the word “male” therein contained and thus allow the item to stand.

### 53. STATE HOME MENTAL DEFECTIVES

Dr. A. J. Busey, Superintendent, April 13, 1921.

Ruling of the Board not to admit inmates under six nor over twenty years of age, is in conflict with the statute authorizing the establishment of the Home, which allows feeble-minded children and mentally defective adults the benefits of the Home. Hence the ruling of the Board cannot stand.

State Board v. Denver, 61 Colo., 266.

Sec. 1, Ch. 71, S. L. 1909; Sec. 5, Ch. 71, S. L. 1909; Sec. 7, Ch. 118, S. L. 1915; Sec. 1, Ch. 132, S. L. 1919; Sec. 3, Ch. 64, S. L. 1919.

### 54. FEES AND SALARIES

Hon. Charles McCall, County Judge, April 14, 1922.

Chapter 88, S. L. 1921, relating to fees of Clerks of Courts of record does not affect Sec. 2536, R. S. 1908, which provides certain fees for county judges on a per diem basis.

Ch. 88, S. L. 1921; Sec. 2536, R. S. 1908.

### 55. STATE FUNDS

Hon. A. M. Stong, State Treasurer, April 14, 1922.

Since The Greeley Loan & Trust Company is under the supervision of the State Bank Commissioner, has complied with the provisions of Senate Bill No. 18, and established a separate banking department, the funds of which are kept separate and distinct from the general funds of the Trust Company, there is no legal objection to a deposit by the State Treasurer of State funds in the banking department of that institution.

S. B. No. 18; Moulton v. McLean, 5 C. A. 455.

### 56. FEES AND SALARIES

Mr. Isaac Pelton, April 14, 1921.

Ch. 88, S. L. 1921, relating to fees of clerks of courts of record, a clerk of a court of record is entitled to retain the advanced fees

paid before the new law went into effect, subject to payment by him to the county treasurer.

**57. FEES AND SALARIES**

Elizabeth Muir, April 15, 1921.

Chapter 122, S. L. 1921, does not affect the fees for filing Chat-tel mortgages in a county of the 4th class.

Ch. 82, S. L. 1913; Ch. 43, S. L. 1917; Sec. 2538, R. S. 1908.

Schwenke v. D. & R. G. R. R., 7 Colo. 516.

**58. DEPARTMENT OF SAFETY**

Hon. Oliver H. Shoup, Governor, April 16, 1921.

Expenses incurred for the support and maintenance of the State Department of Safety from December 1, 1920, to April 7, 1921, may be paid from the appropriation provided for in Sec. 1, H. B. 588, approved April 4, 1921.

**59. INSURANCE**

Earl Wilson, April 23, 1921.

Under the plan submitted by the Colorado Health Association, the benefits or services to be rendered are not contingent upon the happening of any event, and therefore is not engaged in insurance business, nor is it under the jurisdiction of the Insurance Department.

**60. FEES AND SALARIES**

Industrial Commn., April 25, 1921.

The Manager and other employes of the State Compensation Fund are to be paid in accordance with the Long Appropriation Bill, pursuant to authority of H. B. 586, 23rd Gen. Assembly.

**61. CIVIL SERVICE**

Civil Service Commn., April 25, 1921.

The office of Motor Vehicle Inspector has been abolished by legislative enactment, which creates new offices of deputy supervisors. The incumbents are no longer in the civil service.

Ch. 180, S. L. 1921; Sec. 18, Ch. 161, S. L. 1919.

**62. CIVIL SERVICE**

Dr. W. N. Beggs, April 26, 1921.

If the curators and associate curators are officers and teachers of the society, they are not within the classified civic service.



**63. STATE BOARD LAND COMMISSIONERS**

George Stephan, Register, April 27, 1921.

The appraised value of lands upon which loans are made cannot be less than ten dollars an acre.

**64. TAXATION**

The Colo. Tax Commission, April 28, 1921.

Sec. 4, Ch. 134, S. L. 1913, conferring power on the tax commission to determine all questions pertaining to the appointment of deputy assessors and their assistants, and their compensation in cases where county commissioners refuse or neglect to give necessary authority for the employment, has not been repealed.

**65. OFFICERS—COMPENSATION**

Hon. Flor Ashbaugh, April 29, 1922.

A county commissioner elected in 1918 is not entitled to the increased compensation provided by Chapter 109, S. L. 1919.

**66. CIVIL SERVICE**

Civil Service Commission, April 30, 1921.

Chapter 136, S. L. 1921, is constitutional, and upon its adoption and approval, the Highway Commissioner will cease to be in the classified civil service.

**67. HIGHWAY BONDS**

Oliver H. Shoup, Governor, April 30, 1921.

Funds derived from the sale of Highway Bonds may be expended by the reorganized Highway Department without violating the constitutional amendment which provides that the funds shall be expended by the Highway Commission.

**68. INSURANCE**

Earl Wilson, Commissioner of Insurance, May 2, 1921.

The plan of organization of a society which contemplates a total membership of one thousand, entrance fee of \$6.00, yearly dues of one dollar and assessments for every death, occurring to a member, is one of insurance.

**69.**

A building owned and used for National Headquarters of B. P. O. E. is not subject to taxation.

Mr. John K. Tener, Chairman B. P. O. E., May 2, 1921.

I have been informed that the Benevolent Protective Order of Elks contemplates purchasing a lot and erecting a building thereon, in the City of Denver, Colorado. Said building when erected, is to be used as National Headquarters for the organization. It will contain office, lodge and committee rooms, and an auditorium, and the entire building will be devoted to strictly lodge purposes. No part of the building will be leased or rented for offices, stores or other similar purposes.

You have submitted to this department the question as to whether a lot and building thereon of the character mentioned, will be subject to taxation under the laws of this state.

The determination of this matter requires an examination of certain constitutional and statutory provisions relating thereto.

It is provided in Article X, Section 5 of our State Constitution, as follows:

“Lots, with the buildings thereon, if said buildings are used solely and exclusively for religious worship, for schools, or for strictly charitable purposes, also cemeteries not used or held for private or corporate profit, shall be exempt from taxation, unless otherwise provided by general law.”

Section 5545 of the Revised Statutes of Colorado, 1908, reads:

“The following classes of property shall be exempt from taxation, to-wit:

“ \* \* \*

Second. “Buildings used exclusively for religious worship, for schools, or for strictly charitable purposes, with the grounds whereon the same are situated.” \* \* \*

Section 5545 was amended by Senate Bill No. 88 enacted by the Twenty-third General Assembly and approved April 7th, 1921, to read as follows:

Fourth. “ \* \* \* Lots with the buildings thereon, if said buildings are used for strictly charitable purposes.” \* \* \*

The question has frequently arisen in different jurisdictions, whether property of the character described, is exempt from taxation.

In Vol. 12 Am. & Eng. Encyc. of Law (2nd Edition), at page 306, it is said:

“There are several classes of exemption in reference to which it has been suggested that the rule of strict construction should be relaxed. This has been suggested with relation to exemptions of religious,



charitable, and educational institutions on account of their meritorious nature, and the fact that they relieve the government of burdens which it would otherwise have to bear."

In line with the foregoing views, numerous cases have approved and followed the liberal rule of construction.

It seems to be generally conceded that the Benevolent Protective Order of Elks, is a charitable institution.

In the case of Horton, County Treasurer, vs. Colorado Springs Masonic Building Society, 64 Colo. 529, 173 Pac. 61, the Supreme Court of this state quoting from 12 Am. & Eng. Encyc. of Law, supra, followed the liberal rule and held that the grounds and building thereon owned by the Colorado Springs Masonic Building Society, and used for lodge purposes, were not subject to taxation. This case is directly in point and seems to be conclusive on this question.

Under the construction laid down in said decision, I am of the opinion that the lot and building embraced in your question, would be held exempt from taxation under the laws of this state.

#### 70. **CIVIL SERVICE**

Charles C. Pearce, May 4, 1921.

A deputy Water Commissioner is within the provisions of the classified civil service amendment.

#### 71. **SCHOOLS**

Chas. F. Knowlton, May 7, 1921.

It is illegal to change the boundaries of a school district as set out in a petition, without re-submitting the petition to the signers thereof.

#### 72. **INTOXICATING LIQUORS**

Carl S. Milliken, May 9, 1921.

Under the provisions of Sec. 15, Ch. 98, S. L. 1915, each church or religious society is entitled to a separate permit to be issued to one person designated by such church or society.

#### 73. **INDUSTRIAL SCHOOLS**

Alva A. Swain, May 12, 1921.

Chapter 143, S. L. 1921, passed by the 23rd General Assembly, repeals Sec. 3037, R. S. 1908.

The Board of Control of the State Industrial School for Boys has power to admit boys committed to the Institution by the courts of other states.

**74. OFFICERS**

Walter F. O'Brien, May 12, 1921.

The county judge of Chaffee County and the Sheriff of Pitkin County are not entitled during their present terms of office, to the increased salary provided for by Ch. 123, S. L. 1921.

**75. INDUSTRIAL SCHOOL FOR BOYS**

Fred. L. Paddleford, May 13, 1921.

A state administrative board has no power to lease or convey state lands, in the absence of a statute authorizing such action.

**76. SCHOOLS**

Mrs. Esther B. Weir, May 18, 1921.

Payment of a tax on bank stock by the bank entitled owner to vote at school election.

A transfer of territory from one district to another does not disqualify a voter.

**77. CORPORATIONS**

Carl S. Milliken, May 26, 1921.

A domestic corporation not fully organized is required to pay the flat tax provided in Ch. 10, S. L. 1917 (Ex. Sess.) and during its delinquency no instruments should be filed by it in office of Sec'y of State.

**78. MOTOR VEHICLES**

Carl S. Milliken, May 31, 1921.

The date for awarding contract for motor vehicle license number plates, having been set and notice thereof published, cannot be extended.

**79. INSURANCE**

Earl Wilson, June 2, 1921.

The Colorado State Trades Association which imposes assessments on its members to create a fund from which funeral benefits are paid, is engaged in the business of insurance and subject to the regulations governing insurance companies.

**80. BANKS**

E. A. Johnson, June 8, 1921.

The State Bank Commissioner has no authority to examine national banks accepting the benefits of the Limited Trust Feature Act.

**81. TOWNS AND CITIES**

John C. Vivian, June 9, 1921.

A vacancy in the office of Mayor in a city of the second class should be filled as provided by Section 6560, R. S. 1908.

**82. TOWNS AND CITIES**

John R. Clark, June 13, 1921.

A town which has already incurred and has outstanding indebtedness equal to or in excess of 3% of its total assessed valuation of taxable property, incurred for the construction of water works, may contract additional indebtedness within the 3% limitation for the construction of any municipal utility.

**83. HIGHWAY BONDS**

Arthur M. Stong, State Treasurer, June 14, 1921.

There is no doubt as to the legality of the bond issue for State Highways authorized by vote of the people at the November, 1920, election.

**84. EXTRADITIONS**

W. H. Pound, Deputy Dist. Atty., Julesburg, Colo., June 15, 1921.

A person who has never been in this State is not extraditable, although a crime in which he has taken part has been constructively committed within the state.

**85. STATE RANGERS**

P. J. Hamrock, Adj. General, June 15, 1921.

Officers and members of the State Rangers are entitled to witness fees and mileage for their attendance upon court, and such fees are payable in the same manner as other fees in criminal cases.

**86. INTERSTATE COMMERCE COMMISSION**

M. B. Tomblin, June 16, 1921.

Interstate Commerce Act of Feb. 28, 1920, provides procedure for discontinuance of line within a state where lines are instrumentalities of interstate commerce.

Notice to Governor and publication are provided for.

Decision only after hearing.

Colo. Utilities Commission is party to hearing.

87.

**MOTOR VEHICLE**

Carl S. Milliken, Secretary of State, June 16, 1921.

Automobile paint shops are garages within the meaning of Sec. 1, Ch. 7, S. L. 1919, Ex. Sess., and are required to be licensed.

Oxygen or electric welding shops that perform a large portion of work on automobiles are garages within said law.

Tire shops selling new tires, or recovering old ones as part payment, must obtain dealers' licenses.

88.

**TAXATION**

Mrs. Anna Norberg, County Treasurer, Delta, Colo., June 16, 1921.

In preparing assessment books and rolls a full description of the property assessed should be set forth.

89.

**SCHOOLS**

Chas. R. Peter, June 16, 1921.

Notices of election for members of school boards in all districts must be given twenty days before the date of the election.

90.

**HIGHWAY FUNDS**

Major L. D. Blauvelt, State Highway Engineer, June 17, 1921.

Funds realized from the sale of the Highway Bonds must be expended under the direction of the Highway Department and can only be expended in the construction and improvement of State Highways.

91.

**STATE ENTOMOLOGIST**

C. P. Gillette, June 18, 1921.

Under the Act of 1913 and Ch. 6, S. L. 1921, amending the same, the State Entomologist is entitled to 7/12 of \$1500 and 5/12 of \$3000, for the fiscal year ending Dec. 1, 1921.

Appropriation is for 7/12 of \$2000 and 5/12 of \$5000.

92.

**INHERITANCE TAX**

Norman M. Campbell, June 20, 1921.

All bonds situated within the State and owned by a resident or a non-resident decedent, are subject to inheritance tax, regardless of whether said bonds are registered or unregistered.

**93. FEES AND SALARIES**

Harold W. Clark, County Attorney, Aspen, Colo.

A sheriff of a 5th class county is entitled to mileage at 10 cents per mile for serving criminal warrants.

**94. LEGAL NOTICES**

R. E. Gleason, County Treasurer.

Notice of foreclosure of deed of trust must be published in a newspaper having its offices and principal place of business nearest the property to be sold. (See Chap. 169, S. L. 1921.)

**95. STATE TEACHERS' COLLEGE**

W. F. McMurdo, Secy. Board of Trustees, Teachers College, June 21, 1921.

Funds of the Colorado State Teachers College cannot be used to help defray expenses incurred in a suit to reduce freight rates on coal to Greeley.

**96. SCHOOLS**

Mrs. L. C. Beaman, County Supt. of Schools, Silver Cliff, Colo.

It is the duty of the High School Committee to certify the amount of tax for maintenance and support of the high school to the county commissioners without first submitting said amount to a vote of the electors.

**97. SCHOOLS**

Katherine L. Craig, State Supt. Public Instruction, July 1, 1921.

A school district cannot be organized partly out of the territory of a joint school district belonging to two or more counties, where all the territory to form the new district lies wholly within one county, unless the consent of the county superintendents of both counties is obtained.

**98. STATE BOARD OF LAND COMMISSIONERS**

Hon. Geo. Stephan, July 1, 1921.

Where, under Ch. 187, S. L. 1919, a purchaser tendered to the State Board of Land Commissioners a quit-claim deed to mineral rights of certain lands, of which the board had originally made reservation, and also tendered balance of unpaid purchase price, the purchaser is entitled to patent to such land.

Ch. 187, Sec. 18, S. L. 1919.

Walpole v. State Board, 62 Colo. 554; Gunter v. Walpole, 65 Colo. 224.



99.

**WARRANTS**

A. M. Stong, State Treasurer, July 6, 1921.

There are no appropriations from which to pay warrants issued by the Auditor of Jefferson Territory under date of November 6th, 1860.

100.

**COUNTY OFFICERS**

J. L. Thompson, County Commissioner, July 11, 1921.

The salary of deputy county clerk is fixed by the county clerk, subject to the approval of the board of county commissioners.

101.

**FIRE INSURANCE**

W. W. Gibson, Cortez, Colo., July 12, 1921.

Adjusters of fire insurance losses need not be licensed.

102.

**TAXATION**

Florence A. Wilkin, County Treasurer, Walden, Colo., July 12, 1921.

A tax on land tendered by a mortgagee or vendee of land, in good faith, should be accepted without payment of the tax on the personal property of the mortgagor or grantor.

103.

**CIVIL SERVICE**

Civil Service Commission, July 13, 1921.

If Mr. William Thomas is performing the duties of investigator for the State Board of Charities and Corrections, the Civil Service Commission should certify his salary for that position.

104.

**TOWN AND CITIES**

E. J. Thayer, Holly, Colo., July 14, 1921.

If the Town of Lamar has a surplus of electric current, it may furnish electric power to the Town of Holly.

105.

**MOTOR VEHICLES**

Carl S. Milliken, July 14, 1921.

County clerk registering over 12,000 motor vehicles is entitled to six clerks during any of the months of the year he may designate.

County clerk is not entitled to clerk hire he has already expended this year under 1919 Motor Vehicle Act, in addition to the above.



**106. TORRENS ACT**

O. E. Van Deusen, July 18, 1921.

Decree of confirmation of title under Torrens Act need only be filed and not recorded in office of County Clerk, but certificate of registration must be recorded.

Secs. 722, 726, 747, 751, 796, R. S. 1908.

**107. TAXATION**

S. S. Worley, Holyoke, Colo., July 18, 1921.

Property of Telephone company, tho not organized for profit, is subject to general taxation.

**108. OFFICERS**

Carl S. Milliken, July 20, 1921.

The Motor Vehicle Supervisor is entitled to salary as a member of National Guard for his two weeks' service, and also as motor vehicle supervisor, since at time of guard duty he was on vacation with pay, in accord with rules of Civil Service Commission.

**109. MOTOR VEHICLES**

Carl S. Milliken, Secretary of State, July 20, 1921.

The clerk hire authorized to be incurred by county clerks and recorders under Sec. 19, S. L. 1919, as amended by H. B. 196 of 23rd Gen. Assembly, is in addition to 5% of the total gross sums collected in motor and other vehicle registration fees and penalties.

The number of registration clerks allowable is dependent upon the number of residence licenses issued,—not visitors' licenses.

**110. LIVE STOCK**

P. M. Ferguson, J. P., Deora, Colo., July 21, 1921.

Cattle should be dipped in accordance with the provisions of Sec. 6401, R. S. 1908, and Rule 27 of the State Board of Stock Inspection Commissioners.

**111. CHATTEL MORTGAGES**

Rhea Gibson, Deputy Co. Clerk, Hugo, Colo., July 21, 1921.

The fee for filing chattel mortgages in Fourth Class A counties is 25 cents.

**112. STATUTES**

George Stephan, Register, Land Board, July 29, 1921.

Meaning of term "Cultivated farm lands" as used in Chapter 203, S. L. 1921.

**113. FEES AND SALARIES**

Anna Norberg, County Treasurer, Delta, Colo., August 5, 1921.

The fee allowed county clerks for entering subsequent taxes paid in his record of tax sales is five cents.

Subsequent taxes can lawfully be paid by the purchaser at a tax sale at any time after the first of the year in which the taxes become due.

**114. CITIZENSHIP**

P. J. Hamrock, Adjt., Colorado Rangers, August 15, 1921.

It is a violation of Sec. 1, Chapter 124, S. L. 1919, for an unnaturalized foreign-born resident to possess a fire arm of any kind.

**115. INSURANCE**

Earl Wilson, Commr. of Insurance, July 29, 1921.

It is contrary to the intent of S. B. 350, passed by the 23rd General Assembly, to issue more than one burial policy upon the life of a child.

**116. PUBLIC LAND**

Hon. George Stephan, Register State Land Bd., Aug. 15, 1921.

The provisions of Chapter 109, S. L. 1921, do not apply to the assignment of a certificate of purchase of land, but relate to original purchases of state lands.

**117. SHERIFFS—DEPUTIES**

P. J. Hamrock, Aug. 17, 1921.

A person who is not a citizen of Colorado is not eligible for appointment to the office of deputy sheriff.

**118. ROADS AND HIGHWAYS**

J. Arthur Phelps, Co. Atty., Pueblo, Aug. 20, 1921.

An owner of a tract of land which has no outlet or road to the public highway, and the adjacent land is not owned by his grantor, may secure a right of way under the provisions of Sec. 6562, R. S. 1908.

**119. WATER COMMISSIONERS**

Geo. H. Blickhahn, County Attorney, Aug. 23, 1921.

Assistant or deputy water commissioners should be paid by the county or counties pro rata in which such assistant or deputy renders his service.

**120. SCHOOLS**

H. H. Heberlein, Pres't School Bd., Stratton, Colo., Aug. 24, 1921.

It is the duty of the President of a District to sign bonds that have been regularly authorized by vote of the electors of the district.

**121. SCHOOLS**

C. A. Gray, Aug. 24, 1921.

A district constituting part of a Union High School District cannot withdraw from such Union High School, but the union high school district may abandon such district and become part of a county high school district.

**121A. STATE FUNDS**

**Application of, where appropriations exceed the estimated revenues for the biennial period.**

Hon. Arthur M. Stong, State Treasurer, August 27, 1921.

In your letter of the 16th inst., you state that your office "is now carrying as cash, revenue and other warrants to the amount of \$500,000, on account of sufficient taxes not being reported to take care of disbursements" which the treasury is required to make, and that you have taken this course to maintain the credit of the State and to avoid the alternative of endorsing such warrants "No funds" with the result that they would then bear interest at the prescribed statutory rate.

"You ask whether or not it is lawful for you to "purchase these warrants carrying them as cash until taxes are received."

You further ask whether or not you may invest \$150,000 of the State Compensation Insurance Fund and the moneys now in the "Escheat Fund" (S. L. 1913, p. 274) in state warrants.

It appears from the tabulations submitted by you, that the last General Assembly appropriated for the current fiscal biennial period from the general revenues of the state the aggregate sum of \$4,737,464.01. The estimated general revenues for the same period, according to the last biennial report of the Auditor of State (page 22) is the sum of \$4,152,180.87.

Whether or not present indications warrant the belief that the actual receipts of general revenue for the current period will exceed

the above estimates is a matter for the Auditor of State and yourself to determine.

Section 16 of Article X of the State Constitution provides that

“No appropriation shall be made, nor any expenditure authorized, by the general assembly, whereby the expenditure of the state, during any fiscal year, shall exceed the total tax then provided for by law, and applicable for such appropriation or expenditure, unless the general assembly making such appropriation shall provide for levying a sufficient tax, not exceeding the rates allowed in section 11 of this article, to pay such appropriation or expenditure within such fiscal year.”

Of this constitutional provision our State Supreme Court said in *In Re Appropriations*, 13 Colo. 322:

“By said section 16, each and every general assembly is inhibited, in absolute and unqualified terms, from making appropriations or authorizing expenditures of the former class in excess of the total tax then provided by law, and applicable for such appropriation or expenditure, unless such general assembly shall provide for levying a sufficient tax, within constitutional limits, to pay the same within such fiscal year. This language needs no construction. It is plain, simple and unambiguous. It need not be misunderstood. It cannot be evaded. It means that the state cannot be plunged into debt by unauthorized legislation. If the general assembly pass acts making such appropriations or authorizing expenditures in excess of constitutional limits, such acts are void. They create, no indebtedness against the state, and entail no obligations, legal or moral, upon the people, or upon any future general assembly.”

And, further, page 323:

“We are asked what legal criterion is fixed by which it can be known, at the date of an act appropriating or authorizing the expenditure of money, whether such appropriation or expenditure will be in excess of the prescribed constitutional limits. We answer that there is no absolute criterion which can be relied upon in every instance and under all circumstances. The general assembly must, of necessity, exercise their own judgment in the first instance. But it must not be inferred from this, as some have supposed, that appropriations and expenditures which have been approved by the judgment of the general assembly as being within constitutional limits are therefore valid; for that would be to subordinate the



positive requirements of the constitution, to legislative control. It is absurd to say that a provision of the constitution, expressly designed to restrain and confine legislation within certain definite limits, is nevertheless subject to the unrestrained legislative will. Hence, while the general assembly must exercise their own judgment in the first instance, yet if, by reason of error of judgment, or for any other cause, they exceed the constitutional limit in making appropriations or in authorizing expenditures, such excessive acts are mere nullities."

Again, the Court says, page 325:

"What we have said of the legislative department in respect to making appropriations or authorizing expenditures in excess of constitutional authority applies with equal force to the executive department in recognizing or dealing with legislation affecting the public revenue. If legislative acts making appropriations in excess of constitutional limits have unfortunately received the Governor's signature instead of his veto, he should nevertheless withhold his approval from any and all vouchers relating to such unconstitutional appropriations. So, also, the auditor should refuse to draw any warrant therefor, and the treasurer should decline to make payment thereon. In reference to matters arising under enactments clearly unconstitutional, the unauthorized act of one government official is no justification or excuse for a similar act by another."

The above opinion was handed down in 1889, long prior to the enactment of our present statute (S. L. 1913, p. 37) classifying appropriations. Having reference, however, to the priority of appropriations, the Court said, at page 326:

"Chief among the necessary appropriations are such as are sufficient to defray the estimated expenses of the state government for each fiscal year. This is the primary purpose for which an annual tax is required. It is made the imperative duty of the general assembly, by the express terms of the constitution, to provide by law for such a tax (art. 10, sec. 2), though the rate of taxation therefor must not exceed the limitation specified in section 11 of the same article. Having provided a revenue for a specific purpose, in obedience to the constitutional mandate, it is manifest that the fund cannot be diverted to other objects until the primary purpose of its creation is satisfied. It would be trifling with a serious provision of the constitution to hold that the obligation to provide a tax for a given purpose is imperative, but that the

appropriation of the fund arising from such tax is optional.”

And, further, at page 328:

“Appropriations other than those necessary to defray the expenses of the state government, and to pay interest on the public debt, as above explained, and being such as are proper to foster and maintain public institutions and public improvements, may be made by the general assembly to the extent of the surplus over and above the amount required for the necessary appropriations aforesaid; provided, always, that the aggregate of such appropriations, when added to the necessary appropriations aforesaid, do not exceed the limits prescribed by section 16, article 10, constitution.”

Thus it appears that before the enactment of any general statute classifying appropriations, it had been determined that in case of a shortage of revenues, the ordinary expenses of the departments of the state government were entitled to priority of payment.

The general rule is that state warrants are entitled to payment in the order in which they are presented for payment (R. S. '08, sec. 6186). But in case of a shortage of revenue this rule is subject to qualification. In *Stuart v. Nance*, 28 Colo. 206, the Court said:

“In *Kephart v. The People*, ante, p. 73, we held, by implication, at least that the treasurer must observe the statutory direction. That method should be limited to cases where warrants are of the same rank. There was no intention of holding that in a case of shortage of public revenues a warrant drawn for a non-preferred claim, which has been presented and registered by the treasurer, is to be paid in advance of a warrant for a preferred claim, though subsequently drawn and registered. This, if sanctioned, would subordinate the constitution, as construed by this court, to the statute, and permit these executive officers, by arbitrary action in registering warrants, to nullify the decisions of the judicial department.

“The statute itself contemplates a division of the public revenue into different funds, for it says: ‘Every fund in the hands of the state treasurer for disbursement shall be paid out in the order in which the warrants drawn thereon and payable out of the same are presented for payment.’ I Mills Ann. State, sec. 1802; Gen. Stats. 1883 sec 1358. Compliance with this direction involves something more than a mere question of bookkeeping. In case of a shortage of the public revenue a warrant drawn in payment of a preferred claim, though presented for payment and



registered subsequent to the presentation and registration of a warrant for a non-preferred, or deferred, claim, must, notwithstanding its later registry, be paid before payment of the earlier registered deferred claim. The auditor must take such steps and prescribe such regulations and safeguards in the issuing of a warrant, and the treasurer must do likewise as to the payment, as will, in case of such deficiency, secure this result."

By reason alike of the act of 1913, above mentioned, and prior decisions of the Supreme Court, the "available revenues of the state for any fiscal year," if they "are insufficient to meet all appropriations made by the general assembly for such year," are to be applied first to the payment of the "ordinary expenses of the legislative, executive and judicial departments of the state government and interest on the public debt." Until these primary needs are provided for, there are no revenues available for any other purpose, since it is only the surplus, raised within constitutional limits, over and above these requirements, that can lawfully be appropriated for other purposes. (*In Re Appropriations*, supra, p. 328.)

It seems that, in case of a shortage of revenue, even continuing appropriations in the form of mill levies for the support of educational institutions must yield to the requirements of appropriations now declared by statute to be of the first class. In *Stuart v. Nance*, supra, page 204, the Court said:

"Counsel seems not to distinguish, at least are not disposed to admit of a distinction, between the idea of a continuing appropriation and a preferred claim, apparently supposing that a continuing appropriation is necessarily a preferred claim, and a non-continuing or biennial appropriation as compared with a continuing one, is necessarily a deferred claim. An illustration will serve to show the fallacy of this notion. This court has held that an appropriation for educational institutions is, in case of shortage of revenue, postponed to an appropriation for the salaries of the officers of the three departments of government. There was, years ago, a special levy of a fractional mill tax made by statute to support the state university, and in the act providing for the levy there was also an appropriation of the revenues to be realized therefrom, which have been judicially declared continuing appropriations. Appropriations for the salaries of a number of the officers of the three departments are made at each session of the general assembly, and not by continuing appropriations; but a subsequent biennial appropriation for these salaries, in case of a shortage of revenues, would take precedence over a prior continuing appropriation for the state university. So

it will be seen that there may be a clear distinction between a continuing appropriation and a preferred claim against the revenues of the state."

That is to say, special appropriations of a continuing nature, in the form of mill levies, are, in case of a deficiency, subject to the statutory classification and payment accordingly, in like manner as appropriations payable from "General Revenue."

The former decision referred to in the above quotation is doubtless the case of *People ex rel. Regents of the State University, et al. vs. State Board of Equalization*, 20 Colo. 220.

In that case it appears that the respondent board had failed to include in the tax levy for the year 1894 a special levy of 1/10 of a mill, authorized by a legislative act of 1893 for the support of the State University. This omission was occasioned by the fact that the mill levy deemed necessary by the board for "General Revenue," together with the specified mill levies authorized by legislative acts prior to 1893, aggregated the four mill limit fixed by the Constitution. Whereupon the Board of Regents brought a mandamus suit to compel the respondent to include said special levy in the tax levies for 1904. This could have been done only by reducing *pro tanto* the levy already fixed by the board for "General Revenue," since, as already stated, the constitutional limit had already been reached and the other special mill levies were all antecedent in point of time to the special levy in question; and hence, as the court held, entitled to priority. The court held that the respondent board acted within its discretion in fixing the rate of the levy for "General Revenue" as it had done, even though the result was to shut out entirely this special levy for the support of the State University.

Likewise, the available revenues for each fiscal year are to be next applied to the payment of appropriations for state institutions "wherein the inmates are confined involuntarily, and appropriations for charitable institutions," for these are appropriations of the second class; and these appropriations must be paid in full, if sufficient revenue remains after the payment in full of all first class appropriations, though the result might be to extinguish entirely all fourth and fifth class appropriations and to reduce the third class appropriations to the necessity of payment on a pro rata basis only.

Such being the situation from a legal standpoint, in the event there should be a shortage of revenues, it seems to me that the vital question that concerns you in the matter of paying warrants or "carrying them as cash" is whether or not the available revenues for the present period will prove sufficient to pay all outstanding appropriations for the period. It would, of course, be improper for you either to pay in the usual way or to "carry as cash" warrants, if any there be, that are not entitled to be paid because of the want of revenue applicable to their payment. As stated in *In Re Appro-*

*priations, supra*, page 323, there is no legal criterion whereby it can be known at the date of an act appropriating money, whether or not such appropriation will be in excess of the prescribed constitutional limits. So, also, there is now no legal criterion whereby it may positively be known what warrants, if any, presented to you for payment might eventually prove to have been drawn against appropriations in excess of the prescribed limit. Yet you would not be justified in refusing to pay, or suspending payment of, all warrants merely because some of them may possibly turn out to have been drawn against appropriations that are not entitled to payment because of shortage of revenue.

The Supreme Court, in *Nance v. Stuart, supra*, 206, has indicated that in case of a shortage of revenue, appropriate steps should be taken to secure the payment of appropriations in the order of their priority. Thus, the Court says:

“The auditor must take such steps and prescribe such regulations and safeguards in the issuance of a warrant, and the treasurer must do likewise as to the payment, as will, in case of such deficiency, secure this result.”

Of course, if it is apparent, or shall become apparent, that there will be a deficiency of revenue, you could not be expected to take up and “carry as cash” revenue warrants of so low a grade or rank that they could not be paid from the revenues of the period, for such warrants would turn out to be void, as above shown. Aside from this consideration, it seems to me to be purely a matter of the business administration of the finances of the state to determine what amount of revenue warrants you are able to carry in anticipation of revenue applicable to their payment, that will be received from existing levies and other sources of revenue for the period. And in this connection I may say that in my opinion the appropriation made from the Capitol Building Fund by House Bills No. 319 and No. 37, respectively, at the last session, for the payment of salaries, maintenance, repairs, etc., are of the first class, while the appropriations made by Chapter 165, Session Laws 1919 and House Bill No. 262, approved April 11, 1921, for the construction of a state “office building,” are probably of the fifth class, since the cost of such a permanent improvement could hardly be considered an *ordinary* expense of the departments of the state government, within the meaning of the act classifying appropriations (S. L. 1913, p. 37). The warrants drawn against these two classes of appropriations should be given preference accordingly.

With reference to your right to invest an additional amount of the State Compensation Fund in state warrants, it suffices to say that since, as you point out in your letter, this question is now being litigated in the courts, the proper course for you to pursue would be to defer action until your rights in the premises are finally determined by judicial decision.

There is no statute expressly authorizing you to invest the Escheat Fund now in your hands by virtue of Chapter 81, S. L. 1913. Yet I see no substantial objection to your investing the same, after making allowance for probable withdrawals, in state warrants that are certain to be paid in due course of revenue receipts applicable to their payment.

**122. WILLS AND ESTATES**

Pilcher & Woodward, Sept. 3, 1921.

The provisions of Chapter 169, S. L. 1921, apply to the publication of notices of final settlement of estates.

**123. STATE OFFICE BUILDING**

Capitol Managers, Sept. 3, 1921.

Obligations outstanding against the State Office Building should be met from the proceeds of mill levy provided for by Chapter 165, S. L. 1919, and Chapter 122, S. L. 1921, and not from the Maintenance levy of 14/100 of a mill.

**124. SCHOOLS**

Esther B. Weir, Aug. 27, 1921.

Property detached from one district and annexed to another is liable for the debts of the district from which detached to the extent of the tax levied against said property at the time of division, except debts incurred for building and furnishing school houses.

**124A. HIGHWAYS**

The statute regulating the use of public highways makes no provision allowing contemplated "road race" between Denver and Colorado Springs.

Col. P. J. Hamrock, Adj. Colorado Rangers.

I have your letter of the 8th inst., requesting an opinion as to whether a "Road Race," to be held on the Denver-Colorado Springs Road as far as Palmer Lake and return, will be in violation of any of the state statutes.

In reply thereto I refer you to Senate Bill No. 223 (Ch. 141, p. 392, S. L. 1921), passed by the Twenty-third General Assembly and approved April 5, 1921, which provides rules and regulations for the use of the public highways.

The term "vehicle" as used in the act, includes bicycles motoreycles, trieycles, automobiles, auto trucks, trailers and any motor driven vehicle, all horse-drawn vehicles, and all push-carts or other hand propelled vehicles. Sec. 2 of said act reads:



"No vehicle shall be propelled along or upon any public highway at a speed exceeding thirty-five miles per hour; said maximum speed shall be reduced to twenty miles per hour on all mountain roads; to twelve miles per hour on platted mountain curves; to eighteen miles per hour on all other curves; and to twenty miles per hour in the case of vehicles weighing more than 10,000 pounds, including their load; and in case of any vehicle traveling up or down any mountain highway having a grade of ten per cent or more, said maximum speed shall be reduced to fifteen miles per hour."

Section 3a provides:

"All vehicles shall be propelled along all public highways in a careful and proper manner, and with due regard for the safety and convenience of pedestrians and vehicles thereon."

This statute contains no exceptions, makes no provisions permitting greater speed upon the public highways, by any of said vehicles, than is provided in Section 2 thereof, and all acts or parts of acts in conflict therewith are expressly repealed.

The road mentioned by you is a public highway, and assuming that the race referred to will be by some sort of vehicle hereinbefore mentioned, and run in excess of the maximum speed allowed by the statute, I am of the opinion that such a race will be in violation of the existing law, and subject to the penalty provided in Section 6, which reads:

"Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$300.00, or by imprisonment in the county jail for not more than thirty days, or by both fine and imprisonment.

\* \* \*

125.

## COUNTY COURT

Abel I. Vigil, Sept. 12, 1921.

A judge of a county court may lawfully remove the clerk thereof at pleasure, and after such removal perform the duties of clerk.

126.

## LEGAL PUBLICATIONS

Moynihan, Hughes, Knous, Sept. 13, 1921.

Sec. 5, Ch. 169, S. L. 1921, does not apply to the publication of delinquent tax lists.

**127. SCHOOLS**

Robert E. Hanna, Sept. 14, 1921.

It is the duty of county superintendents to notify the board of commissioners of change in school district boundaries.

**128. INSURANCE**

Earl Wilson, Ins. Com., Sept. 19, 1921.

Chapter 147, S. L. 1921, contains all the requirements for incorporation of a mutual company.

**129. TAXATION**

Colorado Tax Commission, Sept. 27, 1921.

Section 12 of the Levy Limit Act has not been nullified by House Bill No. 366, passed by the 23rd General Assembly.

**130. INDUSTRIAL SCHOOLS**

E. C. Stimson, Sept. 30, 1921.

The Colorado State Industrial Schools for Girls cannot of its own accord release one committed to it by a court. An order of court should first be secured for such release.

**131. DETECTIVES—LICENSE**

Carl S. Milliken, Oct. 3, 1921.

Persons engaged in detective business, regardless of whether they are employed as individuals or whether they hold themselves out for employment, or whether engaged in a particular line of investigation, such as investigation of mortgages, must have license as carrying on the detective business. (Sec. 2085, R. S. 1908.)

**132. HIGHWAY BONDS**

Hon. A. M. Stong, October 3, 1921.

Highway bonds may be sold in advance of their being printed and interest thereon be computed (in fixing selling price) only to the date the purchase price is paid into the state treasury.

**133. HIGHWAY BONDS**

Maj. L. D. Blauvelt, Oct. 5, 1921.

There is no legal objection to a plan whereby banks would purchase the state highway bonds at par, pay such purchase price into the state treasury and then arrange with the contractor whose



approved estimates have been paid to be re-imbursed to the extent of the agreed difference between the purchase price of the bonds and their actual value; providing this is done with respect to contracts let in the past. Opinion reserved as to future contracts.

**134. ROADS AND HIGHWAYS**

Crestone Commercial Club, Oct. 5, 1921.

If the county is divided into road districts, a road district is entitled to have at least 50% of its road tax expended within its boundaries; but if the Board of County Commissioners have not divided the county into such districts, they cannot be compelled to expend the county moneys in any part of a county unless they so desire.

(Sec. 5790-91, R. S. 1908.)

**135. HIGHWAY BONDS**

Maj. L. D. Blauvelt, October 5, 1921.

The State Highway Department may in its discretion expend money received from the sale of Highway Bonds in the amount that may be subscribed by citizens of a particular county upon work in that county in the amount such county is entitled to under the law, as computed in the budget estimate.

The Highway Constitutional Amendment and act only contemplate that the whole fund shall be expended eventually according to the prescribed apportionment, and not a pro rata distribution of each contribution to the fund, as such contributions are received.

(Const. Highway Amend., Ch. 139, S. L. 1921.)

**136. BLIND BENEFIT**

E. B. Adams, Oct. 1921.

When the blind benefit commission has certified payment to the County Clerk and Recorder, the board of county commissioners cannot legally refuse to pay the amount of such relief to persons entitled thereto.

**137. COUNTY COMMISSIONERS**

E. B. Adams, Oct. 6, 1921.

County commissioners' action in dividing county into districts, which results in great and manifest inequality in number of population, is reviewable upon a writ of certiorari.

Statutes: Sec. 11 Ch. 90, S. L. 1919; Sec. 1196, R. S. 1908; Sec. 331, Code of Civ. Proc.

**138. LEGAL PUBLICATIONS**

Western Newspaper Union, October 6, 1921.

Ch. 169, S. L. 1921, applies to the publication of Tax Sales and Delinquent Taxes.

R. S. 1908, Sec. 5707, 5710.

Paine v. Palmberg, 20 Colo. App. 432.

**139. COUNTY COMMISSIONERS**

Francisco Mondragon, Oct. 7, 1921.

County commissioners cannot postpone delinquent tax sale by resolution.

County Treasurer must obey statute and hold delinquent tax sale as and when required, regardless of resolution of Board of County Commissioners.

**140. COUNTY COMMISSIONERS**

J. W. Dollison, Oct. 8, 1921.

County Commissioners have no power to regulate the speed of vehicles on county bridges which form part of the public highway.

Ch. 141, S. L. 1921.

Hockaway v. Co. Commrs., 1 Colo. App. 362.

**141. MOTOR VEHICLES**

Hon. Carl S. Milliken, Oct. 8, 1921.

County clerks and recorders or motor vehicle registration clerks cannot charge a 25 cent fee for taking the affidavit verifying the application required upon issuing automobile license.

Sec. 26, Ch. 161, S. L. 1919; Sec. 19, Ch. 181, S. L. 1921.

**142. SCHOOLS**

Miss Grace Cummings, Oct. 10, 1921.

The requirement under the above act that each teacher be paid \$75 per month is mandatory.

A teacher who teaches one-half day, is a part time teacher, and not entitled to receive \$75 per month from the county fund.

**143. INTOXICATING LIQUORS**

A. H. McClenahan, Fed. Prohibition Director, Oct. 15, 1921.

If wine made from the juice of fruits is in fact intoxicating, its possession is prohibited, unless for medicinal or sacramental purposes.

Persons who may lawfully possess intoxicating liquors—See :

Sec. 1, Ch. 141, S. L. 1919 ; Sec. 15, 16, 17, 18, Ch. 98, S. L. 1919 ;  
Sec. 30, Ch. 98, S. L. 1915.

#### 144. **SCHOOLS**

Mrs. Flora Allison, October 13, 1921.

Warrants for the payment of teachers under "Minimum Salary Act," Ch. 214, S. L. 1921, cannot be issued on general county fund until levy is made by county commissioners in November.

#### 145. **COUNTY OFFICERS**

Walter P. Powell, Oct. 13, 1921.

It is the duty of the county clerk to make abstracts of particular documents, also to make abstracts of title when fees are tendered him for such work.

Ch. 122, S. L. 1921.

Henderson v. Co. Commrs., 4 C. A. 301 ; Commrs. vs. Lunney, 46 Colo. 403.

A county clerk serving as clerk of the Board of County Commissioners is not entitled to keep the compensation for such service.

Sec. 729, R. S. 1908 ; Sec. 7, p. 212, S. L. 1891 ; Sec. 1267, R. S. 1908 ; Sec. 2538, R. S. 1908 ; Ch. 122, S. L. 1921.

#### 146. **INSURANCE**

Earl Wilson, Commr. of Insurance, Oct. 13, 1921.

Table written into life insurance policy guaranteed certain "cash loan values" at end of certain years.

Held that these values contemplated the payment of the next year's premium, and that the amount of the cash loan value did not exceed the amount of the terminal reserve.

#### 147. **ARCHITECTS**

C. F. Ward, Oct. 14, 1921.

The affidavit necessary to secure a license to practice architecture must show facts sufficient to prove applicant was actually engaged in practice. (Ch. 136, S. L. 1909.)

#### 148. **INSURANCE**

Earl Wilson, Commr. of Insurance, October 14, 1921.

Clause guaranteeing policy holders dividends equal to dividends paid stockholders violates Secs. 55 and 56 of Insurance Code, Ch. 99, S. L. 1899, as offering stock as inducement to insure.

**149. ROADS AND HIGHWAYS**

F. R. Carpenter, Oct. 15, 1921.

The general principles of the Eminent Domain Act in re: determination of amount to be paid for the taking of lands (Sec. 2632, M. A. S. 1912) apply to Sec. 6559, M. A. S. 1912, deals with the alteration, establishment, etc., of highways.

Statutes: Art. II, Sec. 15, Const.; M. A. S. 1912—2632; M. A. S. 1912—6551; M. A. S. 1912—6559; M. A. S. 1912—2621.

Decisions: Burlington, et al. v. Schweikart, 10 Colo. 178, 183; Colo. M. Ry. Co. v. Brown, 15 Colo. 193, 195; Boothroyd v. Larimer Co., 43 Colo. 428, 435.

**150. INTOXICATING LIQUORS**

A. H. McClenahan, Oct. 15, 1921.

Purchase of alcohol from wholesale druggists outside of State, by retail druggists, dentists, etc., is prohibited by Ch. 1, S. L. 1919.

Ch. 1, S. L. 1917; Sec. 6, Ch. 141, S. L. 1919.

**151. INSURANCE**

M. J. Moses, October 17, 1921.

An Insurance Policy passes to trustee in bankruptcy where bankrupt is authorized by the policy to charge the beneficiary at will.

Ch. 6, Sec. 75, Ins. Code 1913; Sec. 21, Ch. 139, S. L. 1911.

**152. APPROPRIATIONS**

Hon. Oliver H. Shoup, October 18, 1921.

Appropriation made by Ch. 58, S. L. 1921, out of Defense Fund (National Defense Bonds, Series 1917) cannot lawfully be used to pay expenses of the Prohibition Enforcement Department.

Ch. 58, S. L. 1921; Ch. 182, S. L. 1921.

**153. HIGHWAY DEPARTMENT**

Maj. L. D. Blauvelt, Oct. 19, 1921.

The State Highway Dept. is not liable for damages occasioned by negligent conduct of an independent contractor in constructing or improving public highway.

Contract construed. Sec. 27, Ch. 136, S. L. 1921.

154.

**STATE FUNDS**

Hon. A. M. Stong, Oct. 22, 1921.

The State Treasurer may lawfully pay a warrant drawn on the unexpired balance in the Penitentiary Maintenance Fund (Appropriation of 1909-1910) in favor of Convicts' Cash Fund, when by mistake and pursuant to resolution of Board of Penitentiary Commissioners, in 1909-10, certain vouchers were drawn on Convicts' Cash Fund which should have been drawn on and paid from Maintenance Fund.

155.

**COUNTY OFFICERS**

Frank G. Moody, Oct. 22, 1921.

County officers cannot under Ch. 109, S. L. 1919, turn their salary warrants over to Co. Treasurer in payment of fees of their respective offices, in order to avoid discount of warrants by banks.

County officers must account in full and in cash for the fees earned by them.

156.

**PUBLIC LANDS**

The state cannot now save coal under certain lands, to which purchaser is now entitled to a patent conveying it in fee simple,—no such reservation having been made or authorized at the time the certificate was issued.

Purchaser in such case cannot be forced to execute a quit-claim deed to the mineral rights in such property.

Honorable George Stephan, Register State Board of Land Commissioners, October 22nd, 1921.

I have your communication of the 23rd ult., relating to the sale of Section 16, Township 5, North, Range 88 West, comprising 640 acres of land in Routt County, Colorado.

It appears that on February 26th, 1904, the Yampa Live Stock and Land Company, made application in due form, Numbered 105, to the State Land Board to "purchase the land" described therein, offering to bid \$3.50 per acre therefor and stating that the land was desired for pasture purposes.

On March 2nd, 1904, an appraiser representing the board, reported that he had examined said land, which is located about 7 miles South of Hayden, which he described as hilly, rough and badly broken, also stating that it could never be brought under cultivation and could only be used for grazing, and that he deemed it to be to the best interests of the State to sell lands of this character, and a sale of said land at a minimum price of \$3.50 per acre was recommended.



Thereafter the board advertised said land for sale, as required by law, and on April 12th, 1904, the day of sale, the said company being the highest bidder became the purchaser thereof at the price of \$3.50 per acre, and on said date paid in cash to the board the sum of \$224.00, being 10% of the purchase price, the remainder to be paid in 18 equal annual installments, with interest, and on the 22nd day of April, 1904, the company executed bond for the payment thereof which bond was approved. A certificate of purchase for the land so sold was subsequently issued by the board to said company. The required payments have been made by the purchaser up to date, and now the company tenders the balance of the purchase money for said land and asks a patent therefor.

The original application for sale, the report of the appraiser and the bond of the purchaser accompanied your letter.

You state that said land is now known to be coal land.

Under the foregoing state of facts you have requested the opinion of this Department upon two questions, which I shall consider in the order presented. They are, in substance, as follows:

1. Can the State now save the coal, notwithstanding the fact that no definite mention of such reservation was made at the time the certificate was issued?

Apparently, no exception or reservation was mentioned in the notice of sale, the sale itself, or in the certificate of purchase, nor does it seem that any reservation was intended by the parties to be made. In fact, at that time, the statute did not authorize mineral reservations to be made in the sale of state lands. To have made the sale with such reservations would not have been in compliance with the statute.

The Supreme Court of this State has spoken in positive terms upon this subject. In construing the statute then in force relating to the sale of such lands, it was said in *Walpole vs. State Land Board*, 62 Colo., 554, 559: "there is nothing in the statute either directly or indirectly authorizing the board to encumber land sold with any easement, exception or reservation. It was held in *Burke vs. So. Pac. R. R. Co.*, 234 U. S. 669, 53 L. Ed. 1527, 34 Sup. Ct. 907, that when officials authorized to dispose of lands do so by patent containing unauthorized reservations or exceptions, the land passes unaffected by such exception or reservation. While the board is the creature of the Constitution it can dispose of state land only under such regulations as may be prescribed by law, and it has and can have no powers or functions other than those bestowed upon it by legislative enactment."

Section 5185 Revised Statutes of 1908, provides:

"Whenever a purchaser of any state land has complied with all the conditions of the sale, and paid all purchase money with the lawful interest thereon



he shall receive a patent for the land purchased \* \* \* such patent shall convey a good and sufficient title in fee simple."

In the same opinion at page 558 the court said:

"Such is the title and ownership which the legislature declares a purchaser from the state shall acquire. The requirement of Section 5185 that every purchaser shall receive a patent for the 'land purchased' which shall convey to him 'a good and sufficient title in fee simple' necessarily carries with it the mandate that the State Board shall so offer and sell the lands of the state."

"And a good and sufficient title in fee simple means the legal estate in fee, free and clear of all valid claims, liens and encumbrances whatsoever."

Tiedman on Real Property (3 Ed.) at Section 2 defines land thus:

"Land is the soil of the earth, and includes everything erected upon its surface, or which is buried beneath it."

So, in *Walpole vs. State Board*, *supra*, the Court adds:

"If the term 'land' in the statute be construed to mean the soil of the earth, and all that is upon or beneath it, then that is what the Board is required to convey and not merely an interest in it."

See also *Gunter et al., vs. Walpole et al.*, 65 Colo. 234 and *Cronk vs. Shoup, Governor, et al.*, at 197 Pac. Rep. 756.

The sale of the lands described herein having been made by the board to the Yampa Live Stock and Land Company in compliance with the statute then existing, and without reservation, it is my opinion, based upon the foregoing authorities, that when all the purchase money therefor has been paid with lawful interest thereon, according to the terms of said sale, the purchaser is entitled to a patent conveying to it a fee simple title. It follows, therefore, that the answer to your first question must be in the negative, unless it can be shown that there was fraud, collusion or mutual mistake in the making of said sale.

2. Can we now require the purchaser to execute a Quit Claim Deed to the mineral rights in connection with this property?

The statute now in force expressly authorizes the board to make mineral reservations in the sale of state lands, but it does not apply to sales made prior to its enactment and does not have a retroactive effect but was intended to apply to sales made subsequent to its passage.

The statute known as the "validating act" applies to sales of state lands where unauthorized mineral reservations were made, and provides that a patent may issue to the land when all the purchase money has been paid upon condition that the purchaser will reconvey or quit claim said mineral rights.

But in this case there was an absolute sale, without exceptions or reservations, made in compliance with the statute, and I know of no authority or power in the board to require a quit claim deed from the purchaser to the mineral rights in said property. To do so now would make a material change in the terms of the contract of sale and I am unable to see how the purchaser could be required to submit to the same.

Therefore the answer to your second question must also be in the negative.

If, however, it can be shown that there was fraud, collusion or mutual mistake in connection with said sale sufficient to set the same aside, relief might be afforded in equity.

Otherwise, upon full compliance with the terms of the sale, the payment of the purchase money with interest thereon, I am of the opinion, under the circumstances of this case, that the purchaser would be entitled to a patent conveying the fee simple title to said land.

## 157. **LEGAL PUBLICATIONS**

C. R. Meacham, Oct. 24, 1921.

Ch. 169, S. L. 1921, makes no change in the manner in which newspapers are selected for the publication of legal notices.

Selection of newspaper for the publication of notices of tax sales and delinquent tax lists is governed by Sec. 5710, R. S. 1908.

## 158. **ESTRAYS**

E. R. Behring, Oct. 24, 1921.

Taker-up of estray animals, after notifying Board of Stock Inspection Commissioners, should not deliver such estrays to claimant until authorized by Board.

Sec. 6432, R. S. 1908.

## 159. **CERTIFICATE OF DEATH**

J. Arthur Phelps, Oct. 25, 1921.

Under Ch. 112, S. L. 1907, the coroner should make the certificate of death in all cases where there is no medical attendance. If an inquiry or investigation discloses the cause of death to the

satisfaction of the coroner and reveals no suspicious circumstances, no inquest is required; otherwise, an inquest should be held.

Sec. 394, R. S. 1908 (Sec. 24, Ch. 112, S. L. 1907).

Sec. 1300, R. S. 1908.

Sec. 378, R. S. 1908.

## 160. **FACTORY INSPECTION**

Carl DeLochte, Factory Inspector, Oct. 26, 1921.

If the owner of a store, factory, etc., refuses to install sanitary equipment as provided by Sec. 10, Ch. 132, S. L. 1911, he is guilty of a misdemeanor, and is subject, upon conviction, to the statutory penalty.

Sec. 10, Ch. 132, S. L. 1911.

Sec. 12, Ch. 132, S. L. 1911.

## 161. **INTOXICATING LIQUORS**

1. All the provisions of the state law relative to importation, sale, use or possession of intoxicating liquors remain in full force and effect, regardless of the ruling of the Secretary of the Treasury of the United States.
2. Intoxicating liquors may be imported into the state for medicinal purposes only by wholesale druggists engaged in such business in the state and duly licensed under our laws.
3. Licensed wholesale druggists may sell intoxicating liquors for medicinal purposes to duly licensed and registered pharmacists only.
4. Such pharmacists may sell intoxicating liquors for medicinal purposes on the prescription of a "registered" physician only, and not more than 4 ounces may be sold upon any one prescription.
5. If any particular substance is in fact intoxicating and has come into use as a beverage, it is intoxicating liquor within the meaning of the above statutes, regardless of percentage of its alcoholic content.

Sec. 1, Ch. 141, S. L. 1919;

Sec. 15, Ch. 98; Sec. 6, Ch. 141; Sec. 18, Ch. 98 and Sec. 30, Ch. 98, Session Laws 1915.

Hon. E. H. McClenahan, Federal Prohibition Director, Oct. 26, 1921.

You have directed my attention to a recent ruling by the Secretary of the Treasury of the United States with reference to the transportation and use of wine and beer for medicinal purposes, and asked my opinion as to the effect of such ruling in this state. You also ask under what circumstances beer or wine may be imported into or purchased in this state.

I beg to advise you that, in my opinion, all provisions of our state laws relative to the importation, sale, use, or possession of intoxicating liquors, remain in full force and effect in this state, regardless of the ruling mentioned. That is to say, the Federal statute and rules promulgated thereunder, and our state laws, are cumulative in effect. Neither one superseded the other and both must be observed.

Section 1 of Chapter 98, Session Laws, 1915, as amended by Section 1 of Chapter 141, S. L. 1919, prohibits any "person, association or corporation" from keeping or having "in his or its possession, for personal use or otherwise, any intoxicating liquors," and contains the *proviso* "that intoxicating liquors may be imported into this state and handled for medicinal and sacramental purposes only, in the manner prescribed in this act, and in no other."

Section 15 of said Chapter 98 provides that: "It shall be unlawful for any person, association or corporation to sell or give away intoxicating liquors for medicinal or sacramental purposes except as herein provided." The section then provides that permits may be issued by the Secretary of State, with the approval of the Governor, to persons, associations or corporations "engaged in the *drug business at wholesale*, authorizing the sale of intoxicating liquors to any *duly licensed and registered pharmacist*" actually employed or engaged in business as such, or to any person holding and presenting a permit, issued under the statute, authorizing him to purchase liquors for sacramental purposes.

Section 16 of said Chapter 98, as amended by Section 6 of said Chapter 141, provides that: "It shall be unlawful for any one to import intoxicating liquors into this state for medicinal purposes, except persons, associations or corporations *engaged in the drug business at wholesale, exclusively*" \* \* \* and all purchases of intoxicating liquors by duly licensed and registered pharmacists \* \* \* *shall be made only from such persons*, associations or corporations *engaged in the drug business at wholesale within this state* as herein provided."

Section 18 of said Chapter 98 sets forth the method whereby individuals may purchase intoxicating liquor for medicinal purposes in this state. That section provides that "pharmacists may sell intoxicating liquor upon written prescriptions only, by registered physicians in actual practice. \* \* \* Only one sale shall be made upon each prescription \* \* \* and no prescription shall be for an amount exceeding four ounces of any such intoxicating liquor."

From the above statutes it follows that:

1. Intoxicating liquors may be imported into this state for medicinal purposes *only by wholesale druggists* engaged in such business in this state and duly licensed under our laws.

2. Such licensed wholesale druggists may sell intoxicating liquors for medicinal purposes to duly licensed and registered pharmacists only.



3. Such pharmacists may sell intoxicating liquors for medicinal purposes on the prescription of a "registered" physician only, and not more than four ounces may be sold upon any one prescription.

My conclusion, therefore, is that individuals may lawfully procure intoxicating liquors for medicinal purposes in this state only from resident licensed pharmacists, and then only upon the prescription of a registered physician, and in the quantity limited as above stated.

It may be added that our statutes contain no definition of intoxicating liquors, but Section 30 of the original prohibition act of 1915 (Ch. 98, S. L. 1915) provides that:

"This act shall be construed liberally to include within its provisions intoxicating liquors of every kind and character, which now are in use or which in the future may come into use as a beverage, no matter by what name they may be known or called, and no matter how small the percentage of alcohol they may contain, and no matter what other ingredients may be in them."

Under this rule of construction, if any particular substance is in fact intoxicating and has come into use as a beverage, it is intoxicating liquor within the meaning of the above statutes, regardless of the percentage of its alcoholic content.

## 162.

### TAXATION

O. P. Weston, Oct. 27, 1921.

A tax on personal property is not a lien upon real property, although in certain cases it may be collected from the real property owned by the delinquent tax-payer.

Secs. 6182, 6390, 6392 and 6419, M. A. S. 1912.

Lee v. Stannard, 15 Colo. App. 101.

A county treasurer is not obliged to accept a sum less than the total amount of taxes on a certain block of land.

## 163.

### COUNTY OFFICERS

T. H. Hargreaves, Oct. 27, 1921.

It is not unlawful for a county treasurer to engage in the business of abstracting, if such business does not conflict with the duties of his office.

Sec. 2, Art. XII, Constitution.

**164. MOTOR VEHICLES**

Carl S. Milliken, Secy. of State, Oct. 27, 1921.

A two-cylinder, four-wheeled motor vehicle, weighing approximately 900 pounds should be licensed on the same basis as passenger cars—that is,  $\frac{1}{2}$  of 1% of the factory cost, or the minimum rate.

Sec. 1, Ch. 161, S. L. 1921.

**165. APPROPRIATIONS**

Alva A. Swain, Nov. 2, 1921.

An appropriation "for the erection of a hospital and for furnishing the same" cannot lawfully be used for the erection of school buildings.

**166. INTOXICATING LIQUORS**

Robert T. Yeaman, Nov. 6, 1921.

State statutes relating to intoxicating liquors are in full force, regardless of ruling of Secretary of U. S. Treasury. (See also letter to McClenahan, Oct. 26, 1921.)

**167. JUDGMENTS**

Anna E. Adkisson, Nov. 7, 1921.

Any judgment creditor may redeem after six months and before the expiration of nine months from the date of the foreclosure sale by Public Trustee, regardless of the time when he obtains his judgment.

Paddock v. Staley, 13 C. A. 370.

**168. TAXATION**

Francisco Mondragon, Nov. 3, 1921.

The Board of County Commissioners is not authorized to extend time for payment of taxes, nor to rebate the interest or penalties on delinquent taxes, except in specific cases provided by statute.

**169. DEPARTMENT OF SAFETY**

P. J. Hamrock, Nov. 3, 1921.

The Superintendent of the State Department of Safety is not authorized to permit Mr. Goodheart to wear a ranger badge unless he actually becomes a member of ranger force.



**170. STOCK INSPECTION**

W. C. Baker, Sec'y, Stock Inspection Board, Nov. 5, 1921.

1. It is unlawful for a butcher to purchase beef or veal slaughtered or on foot, without having seen and examined the hide and including in his record of the purchase a description of the brand.

Secs. 442, 443, 444, 445, R. S. 1908.

2. It is unlawful for persons other than butchers to sell or offer to sell the carcass of a beef, etc., without exhibiting at the time of sale the hide intact.

Secs. 1, 2 and 3, Ch. 81, S. L. 1895, p. 187.

**171. TAXATION**

G. E. Hawkyard, Nov. 9, 1921.

The lien of a tax on a stock of personal property will follow that stock only in so far as the specific property subject to the lien can be identified.

Secs. 6392, 6396, 6390, M. A. S. 1912.

Chicago Bazaar Co. v. McNichols, 13 C. A. 154; Lee v. Stanard, 15 C. A. 101; Bergerman vs. Beerbohm, 34 Colo. 118.

**172. COUNTIES**

John C. Vivian, Nov. 10, 1921.

Sec. 6049, R. S. 1908, which provides that in certain cases counties may furnish \$50 for burial of deceased soldier, is not intended to cover the entire burial expenses, but simply limits the contribution of the county.

Sec. 6049, R. S. 1908; Ch. 218, S. L. 1921.

**173. INSURANCE**

State Auditing Board, Nov. 10, 1921.

Voucher for \$1,000, drawn by Earl Wilson for attorneys' fees in appeal of Mountain States Life Insurance Company, is not a valid claim against the State of Colorado.

**174. STATE ENGINEER—FUNDS**

Hon. Addison J. McCune, Nov. 10, 1921.

The Gauging Fund, created by Secs. 3333 and 3334, R. S. 1908, as amended by Ch. 212, S. L. 1911, should not be used in addition to, or independent of, the appropriation made by the General Assembly to pay the expenses of the State Engineer's Office.

Sec. 3333-34, R. S. 1908; Ch. 212, S. L. 1911.

**175. CHATTEL MORTGAGES**

Miss Rhea Gibson, Nov. 10, 1921.

A chattel mortgage filed in the office of the county clerk and recorder is a matter of permanent record.

There is no statute which compels the county clerk to give information on mortgages and titles upon the request of business firms or private parties.

Ch. 43, S. L. 1917; Sec. 1378, M. A. S. 1912.

Yates v. Tatum, 60 Colo. 481.

**176. SCHOOLS**

C. W. Martin, Nov. 14, 1921.

If two school districts consolidate—one having a bonded indebtedness—the consolidated district does not assume such bonded indebtedness.

Ch. 204, S. L. 1909; Ch. 119, S. L. 1917.

**177. HOLIDAYS**

Edyth C. Wheeler, Nov. 14, 1921.

November 11th (Armistice Day) is a public holiday.

**178. SCHOOLS**

J. McCullough, Nov. 15, 1921.

A new high school district may be disorganized by becoming a part of a county high school district.

S. L. 1909, p. 407.

**179. FEES AND SALARIES**

R. E. Thornton, Nov. 15, 1921.

Fees collected by reason of the issuing or executing of land papers, such as filings, taking final proofs, etc., by the Clerk of the District Court must be accounted for.

Glaister v. Kit Carson Co., 22, C. A. 326.

**180. STATE MINE INSPECTORS**

Hon. Horace F. Lunt, Nov. 19, 1921.

State Mine Inspectors can make special reports to insurance companies, if the making of such report does not conflict or interfere with their duties as inspectors.

Sec. 2, Art. XII, Constitution.

**181. TAXATION**

Edward W. Davis, Nov. 21, 1921.

Legal publication of a request for tax deed can be commenced before the expiration of the three-year redemption period.

Secs. 6439, 6440, 6447, 6441, M. A. S. 1912.

Richard v. Beggs, 31 Colo. 186; Pollen v. Magna Charta M. & M. Co., 40 Colo. 89, 94.

**182. FEES AND SALARIES**

Anna E. Adkisson, Burlington, Colo.

Salary of County Treasurer of Kit Carson County during the present term is governed by Ch. 108, S. L. 1919, Secs. 6 and 11, and is \$2,100.00.

Secs. 6 and 11, S. L. 1919, Ch. 108; S. L. 1921, Ch. 123.

Henderson v. Boulder Co., 51 Colo. 364.

**183. TAXATION**

Florence Wilkins, County Treasurer, Nov. 22, 1921.

Superseded by letter of Dec. 12, 1921, after decision of Supreme Court in case of Hutchinson v. Herrick, No. 10181, Dec. 5, 1921.

Sec. 5763, R. S. 1908, providing for taxation of live stock in either county, held unconstitutional.

Therefore, live stock is taxable only in county of domicile of owner if moved from one county to another.

Sec. 5763, R. S. 1908; Ch. 191, S. L. 1911; Sec. 5700, R. S. 1908.

Hutchinson v. Herrick, No. 10181, Sup. Ct. Colo.; Carbon Co. Sheep & Cattle Co. v. Routt County, 60 Colo. 224; Bolton v. Bennett, 56 Colo. 507.

**184. LEGAL PUBLICATIONS**

H. E. Barnhart, Nov. 22, 1921.

The provisions of Chapter 109, S. L. 1921, apply to notices of Public Trustees' Sales.

Ch. 109, S. L. 1921, p. 569; Sec. 6865, R. S. 1908.

**185. COLORADO SCHOOL OF MINES**

Hon. R. J. Bardwell, Nov. 22, 1921.

Expense of printing results of Complex Ore Investigation, if deemed an appropriate expenditure by the Board of Trustees of the School of Mines, in order to secure publicity for results of such investigation, is legal under Ch. 5, Ex. Sess. 1919.

**186. FEES AND SALARIES**

Hon. D. W. Fall, Nov. 23, 1921.

Allowance to county judge for work as clerk of county court, is left to discretion of Board of County Commissioners in Summit County.

Sec. 1561, R. S. 1908; S. L. 1913, p. 225.

**187. INSURANCE**

Insurance Com., Nov. 28, 1921; Insurance Com., Nov. 25, 1921.

An association without fraternal or lodge plan, paying benefits out of small sums paid by surviving members upon occurrence of death of member, is a mutual insurance company.

**188. CIVIL SERVICE**

Civil Service Commission, Nov. 28, 1921.

The Secretary of State, acting in good faith, may transfer superintendent of free employment bureau in this state, from an employment bureau in one town or city to an employment bureau in another.

Sec. 13, Art. XII, Const.; Ch. 76; S. L. 1917; Ch. 97, S. L. 1919, p. 332; Civil Service Rules, p. 48.

**189. HIGHWAY DEPARTMENT**

Maj. L. D. Blauvelt, Nov. 28, 1921.

Indebtedness due from Highway Department to county and from county to Highway Department should not be settled by off-setting accounts, but by actual exchange of warrants covering the full amount of indebtedness.

Ch. 136, S. L. 1921.

**190. SCHOOLS**

Edgar Reynolds, Nov. 29, 1921.

Sec. 2, S. L. 1919, provides that the office of a school director who is absent from the district thirty consecutive days may be declared vacant.

Sec. 2, S. L. 1919.

**191. SCHOOLS**

Laura B. Bennett, M.D., Los Angeles, Calif., Nov. 30, 1921.

A School Physician is not a teacher in the public schools within the commonly accepted meaning of that word.

**192. COUNTY FUNDS**

John C. Vivian, Nov. 30, 1921.

The Contingent Fund of a county may be used to pay for construction of certain bridges, injured by June floods.

Sec. 1375, R. S. 1908.

County Commrs. v. Hampson, 24 Colo. 127; County Commrs. v. U. P. R. R., 63 Colo. 143; County Commrs. v. A., T. & S. F. Ry., 52 Colo. 609.

**193. CHATTEL MORTGAGES**

A. I. Weaver, Dec. 2, 1921.

There is no limit of any amount in respect to the filing of a chattel mortgage.

Sec. 7, Ch. 43, S. L. 1917.

**194. NOTARIES PUBLIC**

Hon. Carl S. Milliken, Dec. 12, 1921.

Public policy demands that a single woman who is appointed a notary shall surrender her commission upon marriage, and shall not act under original appointment.

**195. ESTRAYS**

Live stock may be declared to be estrays by inspectors under Sec. 6415, R. S. 1908, regardless of whether such live stock is branded or its ownership known.

R. S. 1908, Secs. 6415, 6426, 6425.

**196. ALIENS**

C. R. Froman, Dec. 15, 1921.

Possession of his first papers by an alien does not invest him with the right to own or carry weapons.

Sec. 1, Ch. 124, S. L. 1919.



**197. COUNTY COMMISSIONERS**

C. R. Froman, Dec. 15, 1921.

Board of County Commissioners is not empowered to require a bond for costs of the complaining witness before permitting the sheriff or his deputies to serve criminal process.

**198. SCHOOLS**

Geo. H. Wheatley, Dec. 15, 1921.

A district is not required to receive pupils from another district, if the directors of the latter district refuse to reach an agreement with the directors of the former district as to the amount of tuition to be paid.

**199. OFFICERS**

A. M. Stong, Dec. 19, 1921.

A member of the Legislature is entitled to receive the salary of another office, where he performs the duties of such office and there is no other claimant, notwithstanding the appointment to such office was illegal.

**200. STATE RANGERS**

Lucile G. McDougal, Dec. 22, 1921.

A Colorado Ranger, acting in his official capacity as informant and complaining witness, under the gambling statute is not entitled to one-half the fine provided in that statute. (Secs. 1792 and 1794, R. S. '08.)

Secs. 10-12, Ch. 12, S. L. 1917 (Extra).

**201. GAME AND FISH**

Lucile G. McDougal, Dec. 24, 1921.

A deputy game warden who institutes a prosecution under the Game and Fish Law is entitled to a share of the fine collected, for which he need not account.

Sec. 2861, R. S. 1908.

**202. COUNTY OFFICERS**

E. J. Grover, Dec. 28, 1921.

County Commissioners should pay sheriff for services of his deputy in attending opening of county court.

Sec. 1283, R. S. 1908.

**203. APPROPRIATIONS**

S. P. Young, Dec. 29, 1921.

Only \$12,500.00 per year is appropriated under Ch. 16, S. L. 1921, for the eradication of predatory animals. This is a specific appropriation, apart from the Predatory Animal Fund which is comprised of the proceeds from the sale of furs, skins, etc.

**204. SCHOOLS**

Thomas E. Konnel, aJn. 4, 1922.

It is within the discretion of the School Board to provide a school in a distant part of the county, or provide a teacher for such school.

R. S. 1908, Sec. 5925.

Pupils attending school in another district—tuition of.

Sec. 1a, Ch. 173, p. 576, S. L. 1919.

**205. COUNTIES**

State Board of Health, Jan. 6, 1922.

Persons affected with smallpox and quarantined, must be furnished supplies, etc., at the expense of the county and not the incorporated town where they live.

County of Saguache v. Decker, 10 Colo. 149.

A quarantined person is entitled to be furnished with good, nourishing food, a nurse, drugs, etc.

**206. INSURANCE**

Insurance Commr., Jan. 10, 1922.

The Commissioner of Insurance is not authorized to receive the service of a notice to take depositions, under Sec. 22, Ch. 99, S. L. 1913.

**207. COUNTY COMMISSIONERS**

Robert E. Bondy, Jan. 11, 1922.

County commissioners have no authority to appropriate money for public health nurses in Colorado.

**208. SCHOOLS**

J. W. Hatfield, Jan. 11, 1922.

Under Teachers' Minimum Salary Act, the county pays \$75 and the school district pays difference between that and salary actually paid.

**209. INTOXICATING LIQUORS**

Hon. W. P. Kinney, County Judge, Jan. 11, 1922.

1. Beneficiaries who have been bequeathed intoxicating liquors under a will cannot legally donate those liquors to hospitals for medicinal use.

2. Executor of a will cannot legally deliver intoxicating liquors to beneficiaries.

3. A testator cannot legally bequeath intoxicating liquors to a beneficiary. Possession by such testator was unlawful.

4. Method of disposition of intoxicating liquors in the custody of an executor of a testator who held them unlawfully.

Sec. 1, Ch. 141, S. L. 1919.

People v. Sandy, No. 9907, Sup. Court.

**210. TOWNS AND CITIES**

A. H. Kime, Jan. 12, 1922.

The Highway Act and the Rules of Road Act do not oust a town from the necessary powers and jurisdiction over streets and roads within the limits of such incorporated town.

Ch. 141, S. L. 1921.

**211. BANKRUPTCY**

Industrial Commission, Jan. 12, 1922.

An award of the Industrial Commission is such a claim as should be filed with Referee in Bankruptcy, inasmuch as it is affected by a discharge in bankruptcy.

**212. SCHOOLS**

Mary V. McFarland, Jan. 13, 1922.

Two questions may be voted upon at the same school election, provided proper notices are given, questions are kept separate and other provisions of the law complied with.

**213. CIVIL SERVICE**

Civil Service Comm., Jan. 13, 1922.

Civil Service Commission should not certify bills for services rendered by a water commissioner unless they have been approved by the division engineer, as required by law.

Secs. 3431, 3432, R. S. 1908.

**214. COUNTY OFFICERS**

L. R. Thomas, Jan. 17, 1922.

A county clerk cannot lawfully pay deputy and assistants employed by him out of the fees collected by the office.

Sec. 10, Ch. 109, S. L. 1919.

**215. SUNDAY AMUSEMENTS**

G. M. Henderson, Jan. 18, 1922.

Moving picture shows cannot lawfully be conducted on Sunday nights.

Sec. 4000, R. S. 1908.

**216. MOTOR VEHICLES**

Hon. Carl S. Milliken, Jan. 18, 1922.

No registration is required when a person visits a filling station merely for the purpose of procuring gasoline, although such filling station is connected with a garage.

Ch. 7, Ex. Session, 1919.

**217. AUDITOR OF STATE**

Hon. A. M. Stong, Jan. 19, 1922.

Deputy appointed by the Auditor of State is authorized to register National Defense Bonds, Series 1917, to execute certificate of registry and to affix thereto the seal of the office of Auditor of State.

Ch. 9, Ex. Session 1917; Sec. 2560, R. S. 1908.

**218. TAXATION**

Maj. T. D. Harris, Jan. 19, 1922.

A tax sale for 1920 taxes of property conveyed to Military Department, June, 1920, and recorded August, 1920, is null and void.

Sec. 4, Art. X Const.; Ch. 201, S. L. 1921.

**219. OFFICERS**

Hon. Wm. R. Shaw, Jan. 20, 1922.

A statute which changes method of payment of a county judge from a fee basis to a flat salary out of a general fund, is not contrary to Sec. 30, Art. V of the Constitution, as increasing or diminishing salary of a public officer during term of office.

Sec. 30, Art. V, Constitution; in re Interrogatories, 66 Colo. 319.

**220. MOTOR VEHICLES**

The Fowler Motor Co., Jan. 20, 1922.

1. As between seller and buyer, the buyer is the party who should pay fee for recording the bill of sale, under the Auto Theft Law.

2. It is the seller's duty to bring the recording of previous assignments down to date and pay the fees therefor.

3. Certificates of ownership, etc., should be recorded in county where the transaction took place.

**221. SCHOOLS**

C. W. Martin, Jan. 23, 1922.

A school house erected on land donated to district by a deed with clause that such lands revert when no longer used for school purposes, does not become real estate, and may be removed.

**222. SCHOOLS**

Mrs. Nora S. Hitchings, Jan. 23, 1922.

The county treasurer should register teacher's salary warrants payable out of the General County Fund, when there is no money in such fund.

**223. APPROPRIATIONS**

Alice Jack Young, Jan. 23, 1922.

There is no appropriation for the payment of bounties under Sec. 419 and 420, R. S. 1908.

Secs. 419 and 420, R. S. 1908.

**224. MOTOR VEHICLES**

J. M. Frisbie, Jan. 23, 1922.

Motor vehicle law with its requirements as to bills of sale, etc., was not intended to apply to automobiles sold under process of court after proper legal proceedings and where the court had jurisdiction of the subject.

**225. COUNTY JUDGE**

Edward S. Wheeler, Jan. 24, 1922.

Where a county judge elects to act as his own clerk, he is personally liable as judge for fees collected by him as county clerk, and this liability is covered by surety bond given by him as county judge.



**226. MOTOR VEHICLES**

Hon. Carl S. Milliken, Jan. 24, 1922.

The Motor Vehicle Department has no authority to dispose of, and give valid title to purchaser, cars taken over by department, the owners not being found.

**227. LEGAL PUBLICATIONS**

J. C. McCreary, Jan. 26, 1922.

There is no statute authorizing the board of county commissioners of a county to designate any one paper as the official county paper for publication of sale notices and other legal matters.

Sec. 5, Ch. 169, S. L. 1921.

**228. PUBLIC LANDS**

State Land Board, Jan. 26, 1922.

The State Board of Land Commissioners has at all times since 1877, had the right to direct sale of saline lands mentioned in Section 11 of Enabling Act, under certain general regulations.

Sec. 11, Enabling Act; Sec. 9, Art. IX, Const.; S. L. 1909, p. 322; Sec. 10, Art. IX, Const.; Sec. 29, Art. IV, G. L. 1877, p. 730.

Sec. 7, S. L. 1881, p. 325; Sec. 2723, G. L. 1883; S. L. 1887, p. 238, Secs. 13 and 13; S. L. 1889, p. 334; S. L. 1905, Sec. 23, Ch. 134, S. L. 1909, Sec. 1, Ch. 209; S. L. 1917, Sec. 17, Ch. 134; S. L. 1919, Sec. 17, Ch. 187, p. 646.

**229. STATE EQUALIZATION BOARD**

St. Bd. of Equalization, Jan. 28, 1922.

The determination of whether the State Board of Equalization has adjourned is solely a question of intent of its members, and as such purely a question of fact.

**230. WATER RIGHTS**

Hon. A. J. McCune, Jan. 31, 1922.

The City and County of Denver is not required to pay the fees provided by statute on account of making filings for water appropriations in the State Engineer's office, for the benefit of the public.

Sec. 3332, R. S. 1908; S. L. 1911, Ch. 212; S. L. 1919, Sec. 1, Ch. 188; Secs. 3333-3334, R. S. 1908.

City of Denver v. Bonesteel, 28 Colo. 483; In Re Mackey Est., 46 Colo. 79.

**231. TUBERCULOSIS**

Dr. Charles G. Lamb, State Veterinary Surgeon, Jan. 31, 1922.

Indemnities to be paid by state under provisions of Ch. 230, S. L. 1921, which deals with eradication and control of tuberculosis among domestic animals, cannot be paid to owners of condemned cattle, even though owners waive their right to indemnity payments from the federal government, when that government is not able to make such payments.

Ch. 230, S. L. 1921.

**232. COUNTY OFFICERS**

Prof. Elmore Floyd, Feb. 1, 1922.

Ch. 123, S. L. 1921, which increases the allowance of mileage to county superintendents to cover traveling expenses incurred in the performance of their duties, is applicable to county superintendents elected prior to its enactment.

Ch. 123, S. L. 1921.

**233. INSURANCE**

Commissioner of Insurance, Feb. 2, 1922.

Where it was provided in an insurance policy "it is estimated that this policy will become full paid and premiums cease at from age 73 to age 74 with a corresponding cash settlement if surrendered of from \$1,206 to \$1,218," the insured was probably entitled to receive full paid policy at least at age 74, of a value of at least \$1,206.00.

**234. TAXATION**

C. W. Elsner, Feb. 6, 1922.

Where real property and personal property are assessed and taxed together, the real property being assessed to a purchaser under contract, if the real property is sold for both real and personal taxes, the owner of the real property may redeem without paying the personal property tax.

**235. HIGHWAY DEPARTMENT**

Highway Department, Feb. 7, 1922.

The Highway Department may adopt reasonable rules and regulations covering expenses of employes assigned to work away from their legal residence.

**236. PUBLIC TRUSTEE**

Anna E. Adkisson, Feb. 7, 1922.

When a trust deed is foreclosed, the public trustee should retain the note whether the amount received is sufficient to pay it fully or not, but should surrender the same to holder for purpose of suit to recover deficiency.

Amount paid at sale should be credited on note but note should not be canceled unless total amount due has been received.

**237. COUNTY OFFICERS**

Chas. R. Peter, Feb. 8, 1922.

The county treasurer is entitled to receive 5 per cent for the collection of school taxes. This rule is not changed by Teachers' Salary Law. (Ch. 214, S. L. 1921.)

**238. MILITARY DEPARTMENT**

P. J. Hamrock, Feb. 9, 1922.

Deed of land to state cannot contain clause providing for reversion on failure of conditions.

**239. FEES AND SALARIES**

Hon. H. E. Mulnix, Feb. 9, 1922.

Under the decision rendered by the Supreme Court in *People ex rel. v. Father Wm. O'Ryan, President, etc.*, the salary of the Secretary of the Board of Charities and Corrections is to be paid out of the continuing appropriation made by Ch. 22, R. S. 1908, and the salary of the Investigator, out of the General Appropriation. Ch. 22, 1908.

*People ex rel. vs. Father O'Ryan*, No. 75512, Dist. Ct., Div. 2; No. 10144, Supreme Court.

**240. STATE BOARD OF LIVESTOCK INSPECTION**

W. C. Baker, Sec'y, Feb. 10, 1922.

The State Board of Stock Inspection Commrs. is not authorized to issue a final and binding arbitration award at the instance of only one party when the other party has not impliedly or expressly consented to be bound by such award. (Sec. 9, p. 405, S. L. 1911.)

**241. EXTRADITION**

Mrs. H. C. Buell, Feb. 10, 1922.

A man charged with non-support may be extradited under Sections 1, 2 and 3, page 527-8, S. L. 1911.

**242. COUNTY COMMISSIONERS**

J. G. McCreary, Feb. 11, 1922.

County commissioners have no authority to prescribe the newspapers wherein notices of Public Trustees' Sales shall be published.

**243. SCHOOLS**

E. D. Bolger, Sec'y, Feb. 14, 1922.

Voting by resolution at a meeting instead of by ballot, to build a school house, is legal if the meeting was called on due notice.

**244. FEES AND SALARIES**

John C. Vivian, County Attorney, Golden, Colo., Feb. 14, 1922.

Salary of an under-sheriff, except in counties of the 5th class, shall be paid in a definite amount monthly and not on a fee basis.

Ch. 123, Sec. 2, S. L. 1921.

**245. GRAIN INSPECTOR**

John Endelman, Feb. 14, 1922.

A person who makes a business of purchasing farm produce shall buy by the Federal grades and obtain license from the Chief Grain Inspector.

(Ch. 125, S. L. 1919.)

A grower of grain does not need a license to ship his own grain.

A co-operative company does not need a license. Persons selling grain on commission shall obtain a license. (Ch. 54, S. L. 1919.)

**246. CORPORATIONS**

Hon. Carl S. Milliken, Sec'y of State, Feb. 15, 1922.

The Farmers' Reservoir & Irrigation Company is a mutual irrigation company and upon filing certificate of renewal of its corporate existence is required to pay only the fees prescribed by statute for corporations not for profit.

247.

**STATE RANGERS**

Col. P. J. Hamrock, Supt. Dept. of Safety, Feb. 15, 1922.

It is not the function of the Colorado Rangers to compel obedience to an order of the State Engineer, issued under Sec. 1, Ch. 153, S. L. 1911.

248.

**COUNTY COMMISSIONERS**

N. G. Corson, Feb. 16, 1922.

A board of county commissioners should not appoint a member thereof as road superintendent, and it is doubtful whether it could properly employ one of its members as a common laborer on the public roads.

249.

**MOTOR VEHICLES**

Hon. Carl S. Milliken, Sec'y of State, Feb. 16, 1922.

The Auto Theft Law of 1919 does not require garage owners to report their transactions to sheriffs or peace officers.

250.

**SCHOOLS**

F. R. Carpenter, Feb. 17, 1922.

Money voted by Union High School District for the transportation of children, may be used to pay the board of such children when roads are impassable.

251.

**INHERITANCE TAX**

James F. Sanford, Feb. 23, 1922.

Half brothers and half sisters are not entitled to the exemption that a brother and sister are entitled to under Sec. 2 of the Inheritance Tax Law, 1921, page 9.

252.

**CORPORATIONS**

Hon. Carl S. Milliken, March 1, 1922.

Under Sec. 3, Ch. 105, S. L. 1919, a domestic corporation may file articles under the same name as a foreign corporation already qualified under the laws of this state.

253.

**PESTS—INSPECTION**

Geo. M. List, March 7, 1922.

Notice to land owner to eradicate pests need not be given as a prerequisite to right of Pest Inspector to proceed to eradicate pests



at land owner's cost, in a district formed by two-thirds of the resident land owners, as provided by Sec. 3, Ch. 95, page 258, Laws 1915, as amended by Sec. 2, Ch. 142, page 400, S. L. 1921.

## **254. NATIONAL GUARD**

Maj. B. M. Lake, March 8, 1922.

A person who is Secretary of the Colorado Rangers may also occupy the position of Finance Officer of the Colorado National Guard.

## **255. TAXATION**

Anna Norberg, County Treasurer, March 10, 1922.

A County Treasurer should issue a tax deed on a certificate of purchase, if the description in the certificate identifies the property.

## **256. INHERITANCE TAX**

Hon. H. E. Mulnix, Auditor of State, March 11, 1922.

Interest should not be paid by state on refund of inheritance tax erroneously paid.

## **257. DETECTIVES**

G. G. Sawyer, March 13, 1922.

The law does not prohibit a duly licensed individual from carrying on the detective business under a representative name.

## **258. CORONERS**

J. Arthur Phelps, March 13, 1922.

A county coroner is entitled to the fees provided for by Chapter 85, Session Laws 1915, only in cases where inquests or investigations are actually held.

Ch. 85, S. L. 1915.

## **259. INTOXICATING LIQUORS**

Colonial Drug & Sales Co., March 14, 1922.

No alcohol can lawfully be sold in this state unless prepared under a formula as set forth in Chapter 1, Session Laws 1917.

259-a

**CORPORATIONS**

**Articles of Incorporation of a society to be known as "Ku Klux Klan, Inc.," held defective because not in compliance with statutory requirements.**

Hon. Carl S. Milliken, Secretary of State, March 15, 1922.

You have submitted to this department a paper purporting to be a certificate of incorporation of a society to be known as the "Ku Klux Klan, Inc.," which has been filed in your office, but no certificate of organization and authority to do business has been issued by you, and you now request an opinion as to your duty in the premises.

It is not every kind of an organization or society that may be incorporated, but only those provided for by law. An organization or society seeking to be incorporated under the general law, must be such as comes within the classification provided for by statute.

Provision is made by our statute for the organization of corporations for gain or profit, and also for those not for pecuniary profit. The first class embraces business corporations such as surety companies, title and guaranty companies, building and loan associations, mining companies, telegraph companies, ditch companies, flume and pipe line companies, water users' associations, toll road companies, bridge and ferry companies, gas companies, joint stock companies, etc. The second class must be for some lawful purpose other than pecuniary profit. The statute also makes provision for the incorporation of religious, educational and benevolent societies.

It is clear that the organization in question is not embraced within the class of any of the business corporations specifically designated by statute, nor does it claim to be a religious, educational or benevolent society, so it is apparent that said organization is seeking to be incorporated as a corporation not for pecuniary profit.

The organization of corporations for a lawful purpose and not for pecuniary profit is provided for by Section 1013, Revised Statutes of 1908, which reads:

"Any three or more persons, citizens of the United States, who shall desire to associate themselves for any lawful purpose (other than pecuniary profit) under the provisions of this act, may make, sign and acknowledge before any officer authorized to take acknowledgments of deed in this state, and file in the office of the Secretary of State, a certificate in writing, in which shall be stated the name or title by which such corporation, association or society shall be known in law, the particular business and objects for which it is formed, the number of its directors, trustees or managers, and the names of those selected for the first year of its existence."

Section 1014, R. S. 1908, provides:

“Upon filing a certificate as aforesaid, the Secretary of State shall thereupon issue a certificate of the organization of the corporation, association or society, duly authenticated under his hand and seal of state, and the same shall be recorded in the office of the recorder of deeds of the county in which the principal place of business of such corporation, association or society is located. Upon complying with the foregoing conditions the corporation, association or society shall be deemed fully organized, and may proceed to business.”

Under Section 1013 the incorporators must be citizens of the United States and the purpose must be lawful and for other than pecuniary profit. The information given on these points is very meagre. The addresses of the incorporators are not disclosed so that it may be ascertained if they are really citizens of the United States. Nor is it anywhere shown that the purpose is lawful, nor are there any facts given by which it can be determined whether or not the organization is for pecuniary profit. This section requires that the particular business and objects for which the corporation, association or society is formed shall be stated in the certificate of incorporation. The reason for this is, undoubtedly, that it may be determined whether the business and objects come within the provisions of the statute requiring the same to be lawful.

The articles in question contain this statement, viz., “The particular business and objects for which said corporation is formed are: To unite white, male, gentile, native-born citizens of the United States into a fraternal militant society, having as its ideals and objects the support and maintenance of the principles of true Americanism as embodied in the Constitution and laws of the United States of America.”

We have no precedent for the incorporation of any such society in this state within my knowledge. The articles should specify the purpose with sufficient clearness to enable you to see that the purpose specified is one provided for by statute, and to define with some degree of certainty the scope of the business or undertaking to be pursued. It is proper and important to see that the purpose of the articles is so expressed as to carry out the intention of the legislature in making that requirement, for it is by a compliance with it that the public as well as those specially interested in the corporation are to be protected against the assumption of powers not granted.

In my judgment the articles presented in this case are defective, and do not comply with the requirements of the statute. The specification of the business and objects for which the organization is formed is too vague, general and indefinite.

How is the society to be formed? How may membership be acquired? What are the rights, duties and privileges of its mem-

bers? What is meant or understood by a "fraternal, militant society"? What principles of true Americanism embodied in the Constitution and laws of the United States of America are referred to, and how are the same to be supported and maintained? Are financial obligations to be incurred? What funds may be collected or distributed, or who may be beneficiaries? From what sources are the expenses of the organization to be met and how may the money be expended? Nothing is said as to the plan or method of effecting the purposes stated. These things are important and essential to enable you to see if the business is lawful, and further, whether it is for pecuniary profit. Certain filing fees are required for corporations for profit, which are not required as to those not for pecuniary profit. A corporation must not only have a lawful purpose, but the means whereby it is proposed to attain that end must be lawful, otherwise it has no right to exist. A natural person may do anything which is not forbidden by law, but a corporation can only do that which it is expressly or impliedly authorized to do by its charter or articles of incorporation.

In this state corporations are creatures of the statute and can be brought into existence only by substantial compliance with statutory provisions. If any one of these statutory requirements is omitted, such omission is a fatal defect. Tested by the provisions of the statute, the certificate in question is clearly insufficient. It is your duty to see that the statutory requirements are observed in all cases. There is no legal duty on your part to file or approve articles or certificates of incorporation unless they substantially comply with the statute in such cases made and provided.

It will be observed that it is only upon filing the certificate required by Section 1013 that you shall issue a certificate of organization, and it is only upon a compliance with the conditions mentioned in Sections 1013 and 1014 that the "corporation shall be deemed fully organized and may proceed to business."

The rules herein stated are so well established I do not deem it necessary to lengthen this opinion by the citation of authorities.

Without attempting to pass upon the merits of the proposed society, I have pointed out apparent defects in the form of the certificate which I regard as sufficient to authorize its disapproval. If articles tendered to you are for a corporation not included in the statute, or if they fail in any substantial particular to comply with the statute, you may refuse them.

J. W. B. Smith, March 16, 1922.

The law does not prohibit a county commissioner from engaging in the employment of the State Highway Department.



**261. SCHOOLS**

C. H. Stewart, Sec'y School Dist., March 16, 1922.

There are three school funds as designated under Ch. 214, S. L. 1921—the Special School Fund, the Old General School Fund and the New General School Fund—the latter being used to pay teachers' salaries, only.

**262. SCHOOLS**

E. L. Williams, March 16, 1922.

Bonds may be issued by school board from time to time as necessity requires, under  
Sec. 11, Ch. 181, S. L. 1919.

**263. ELECTIONS**

L. P. Kennedy, March 17, 1922.

If no annual election is held, officers hold over and no penalty is incurred for failure to hold election.

**264. MOTOR VEHICLES**

Gordon & Gordon, March 17, 1922.

To procure a motor vehicle registration license it is only necessary to present the title papers to the county clerk, but before selling a motor vehicle the person offering to sell the same must record all title papers in the county where the motor vehicle is offered for sale.

**265. COUNTY COMMISSIONERS**

Wm. C. Ives, March 17, 1922.

A member of a board of county commissioners may be employed by the State Highway Department as engineer, supervisor or overseer.

**266. JURORS**

Francisco Mondragon, March 17, 1922.

It is the duty of the county treasurer to furnish to the board of county commissioners a complete list of all male inhabitants of his county who pay taxes.

**267. FEES AND SALARIES**

Solon D. Ackley, March 20, 1922.

Sheriff's fees in 4th Class B counties are not limited for services in connection with sales of real estate on execution, but they



are allowed one-half of 1 per cent on all sums over \$1,000; such commission not to exceed twenty-five dollars.

**268. STATE HOME OF MENTAL DEFECTIVES**

Gustave Anderson, March 20, 1922.

The Board of Commissioners of the State Home and Training School for Mental Defectives cannot employ one of its own members to do construction work at the institution.

**269. CERTIFIED PUBLIC ACCOUNTANTS**

Richard M. Crane, March 27, 1922.

Use of letters C. P. A. (N. A.) by one not duly licensed as a certified public accountant in Colorado, constitutes a violation of Sec. 4992, R. S. 1908.

**270. INSURANCE**

Hiram E. Gardner, April 5, 1922.

A reciprocal fire insurance exchange is subject to 2 per cent tax on its premium collections in accordance with Paragraph "m" Sec. 81, Ins. Code (Laws of 1913, Ch. 99).

**271. FEES AND SALARIES**

Alice Jack Young, April 10, 1922.

The county treasurer of a fourth class B county is not entitled to the 5 per cent fees as provided in Sec. 5701, R. S. 1908, because Sec. 11, Ch. 123, S. L. 1921, places Baca County in fourth class B. The salary of county treasurer in fourth class B counties is \$1,800 per annum.

**272. TAXATION**

Milton R. Welch, April 10, 1922.

Real estate owned by Colorado College, but not physically used in the conduct of the institution, is not exempt from taxation, although the income thereof is used for the support of the institution.

**273. STATE TEACHERS COLLEGE**

State Auditing Board, April 12, 1922.

Ch. 184, S. L. 1921, and Sec. 6119, R. S. 1908, authorizes payment of actual traveling expenses of members of Board of Trustees.

**274. HIGHWAY BONDS**

L. D. Blauvelt, April 13, 1922.

When sold above par, total sum received, including premiums, must be placed in "Colorado State Highway Bonds, Act 1921, Fund," and not in Interest Fund.

**275. STATE TEACHERS COLLEGE**

State Auditing Board, April 13, 1922.

A resolution of the Board of Trustees of the State Teachers College providing for the payment of a so-called bonus upon salaries thereafter to be earned by employes of the institution, is valid.

**276. STATUTES**

Dr. H. A. LaMoure, Supt. St. Hospital, April 14, 1922.

"Legal residence" is synonymous with "domicile" in insanity statute.

Sec. 1, Art. VII, Const.; Sec. 4157, R. S. 1908; People vs. Turpin, 49 Colo. 234.

**277. HIGHWAY DEPARTMENT**

Maj. L. D. Blauvelt, April 17, 1922.

The State Highway Department should not pay claims of power line companies on account of removal of their poles necessitated by improvements on the State Highway.

**278. PUBLIC RECORDS—MARRIAGE LICENSES**

Geo. R. Painter, April 17, 1922.

Marriage license records are public records and are open to public inspection subject to reasonable regulations by the officer having their custody.

**279. INSANE PERSONS**

Hon. M. N. Jordan, County Judge, April 17, 1922.

Relatives of indigent insane persons confined in the Colorado State Hospital are liable for the expense of such insane persons.

**280. INSURANCE**

Insurance Commissioner, April 19, 1922.

A synopsis of statements must be published under provisions of Ch. 169, S. L. 1921.

May be published in a newspaper other than a daily paper.

The date from which the time for publication runs commences when the certificate of authority is actually issued to the company in question, even though this be after March 1st.

## **281. COUNTY OFFICERS**

F. R. Carpenter, April 19, 1922.

A county board probably has the right to employ and pay the expenses of a delegate to represent the county before the U. S. Interior Department at Washington, for the purpose of inducing that department to revoke an executive order promulgated by it, where such revocation would be of great advantage to the financial interests of the public of the county.

## **282. WILLS AND ESTATES**

A. G. Maine, County Clerk, April 20, 1922.

The number of executors under a will does not change the fees allowed by Chapter 247, S. L. 1921.

## **283. NATIONAL GUARD**

Col. P. J. Hamrock, Adjutant General, April 21, 1922.

Officers of National Guard must be elected in accordance with Sec. 3, Art. XVII of the Colorado Constitution, there being nothing in the Congressional Act of June 4, 1920, providing for reorganization of guard to indicate contrary intention.

## **284. INSURANCE**

Insurance Commissioner, April 24, 1922.

The penalty for the non-payment of annual tax on insurance companies begins to run on April 1 of each year.

The date when checks are received, and not the date of the check, determines whether a penalty has been incurred.

## **285. MOTOR VEHICLES**

Rex. C. Evans, April 24, 1922.

Laws of 1921, page 619, amended Laws of 1919, page 546, Sec. 19; and Registration Clerk can only be had where a county issues 2,000 licenses, and not where a county issues 1,000 licenses, as formerly.

**286. UNIVERSITY OF COLORADO**

Dr. George Norlin, President, University, April 26, 1922.

The Board of Regents cannot receive or expend the mill levy provided for by Chapter 174, S. L. 1921, until it obtains control of the \$700,000.00 donated by the General Education Board, Rockefeller Foundation, for a psychopathic hospital.

**287. HIGHWAY BONDS**

Major L. D. Blauvelt, April 27, 1922.

Proceeds of "Colorado State Highway Bonds, Act of 1921," may be used to pay installments due for current construction on Federal Aid projects, begun prior to authorization of bonds.

**288. TAXATION**

Florence A. Wilkins, April 28, 1922.

Where mortgagee of real estate redeems from a tax sale thereof, he is not required to pay personal property taxes assessed against the mortgagor and included in the tax sale.

**289. BLIND BENEFIT ACT**

Miss Hutsinpillar, May 1, 1922.

Under Ch. 90, S. L. 1919, counties are not required to pay the heirs of a deceased beneficiary under the Act for the relief of the Adult Blind, the pro rata part of the allowance accruing between the last quarterly payment date and death of beneficiary.

**290. CAPITOL BUILDING FUND**

Industrial Commission, April 28, 1922.

Certain appropriations for Capitol Building Fund held valid. Evidences of indebtedness thereunder were properly termed "warrants" by the State Auditor, and the Industrial Commission is authorized to invest in the same.

**291. COLORADO AGRICULTURAL COLLEGE**

Dr. Chas. A. Lory, President, Agricultural College, May 4, 1922.

The appropriation of \$25,000.00, to establish and maintain a Department of Economics and Sociology at the State Agricultural College may be used for that purpose until exhausted.

**292. MINES AND MINING**

J. H. Hamilton, May 5, 1922.

The Act of Congress, August 24, 1921, providing that the period within which assessment work on mining claims shall be done, shall end on June 30, would extend the time for performance of the first year's assessment work on a claim located January 11, 1921, to June 30, 1923.

**293. ROADS AND HIGHWAYS**

Foster Ranson, May 5, 1922.

There is no law requiring the performance of labor on public highways by anyone at the present time, the former law on that subject having been repealed. Section 4387, R. S. 1908, exempts members of the National Guard from labor on the public highways.

**294. COUNTY OFFICERS**

Wm. J. Harvey, Sheriff, May 6, 1922.

The Sheriff of Clear Creek County is entitled to actual expenses and mileage in serving summons. Mileage must be accounted for, but actual expenses may be retained by the sheriff as reimbursement.

**295. STATE BOARD OF LAND COMMISSIONERS**

Hon. George Stephan, Register St. Ld. Bd., May 6, 1922.

The bank account of moneys received by the State Board of Land Commissioners should be kept in the name of the Register or the Deputy Register, rather than of the Board itself.

**296. GARNISHMENT**

J. W. C. Shepherd, Co. Treas., May 9, 1922.

Where a public trustee has a surplus resulting from sale of property, the same is subject to garnishment.

**297. OFFICERS**

Hon. O. H. Shoup, Governor, May 9, 1922.

Under Sec. 8, Article V, of the State Constitution, a member of the General Assembly is not eligible to appointment as a member of the Moffat Tunnel Commission, created by an Act of the Extra Session of the 23rd General Assembly.



298.

**COUNTY OFFICERS**

Anna E. Adkisson, County Treasurer, May 10, 1922.

It is the duty of the county treasurer to collect annual special assessments levied under a sewer ordinance adopted by the city council of Burlington.

299.

**TAXATION**

Geo. Stephan, Register, State Land Board, May 15, 1922.

Where the State Land Board loans money on real estate and thereafter pays taxes to effect its redemption from a tax sale, it is not required to pay personal property taxes assessed against the mortgagor.

300.

**DRAINAGE DISTRICTS**

B. F. Ayers, County Treasurer, May 16, 1922.

The treasurers of drainage districts can pay interest coupons on bonds issued by the district only upon warrants duly drawn by the boards of directors.

301.

**PUBLIC SCHOOL INCOME FUND**

**How State Funding Bonds, series of 1910, amounting to \$550,000, should be disposed of by the State Treasurer and proceeds distributed for school purposes.**

Hon. George Stephan, Register, State Board of Land Commissioners, May 16, 1922.

I have your letter of recent date in which you state, in substance, that the Public School Income Fund is credited with the sum of \$550,000.00 of state bonds, series of 1910, and that your board is inclined to transfer this fund to the Permanent Fund by degrees, say \$50,000.00 each six months; that this could be gradually transferred without material injury to the Permanent Fund and at the same time, to some extent, help out the Income Fund.

The specific inquiry submitted to this office is as follows:

“We desire to know whether we have authority to order the Treasurer to transfer these bonds by purchasing the same for the Permanent Fund and distributing the proceeds through the Income Fund.”

In the determination of this question it becomes necessary to refer to certain constitutional and statutory provisions relating thereto.

Article IX of our State Constitution contains three sections pertinent to this subject as follows:

Section 5 reads:

“The public school fund of the state shall consist of the proceeds of such lands as have heretofore been, or may hereafter, be granted to the state by the general government for educational purposes; all estates that may escheat to the state; also all other grants, gifts or devises that may be made to this state for educational purposes.”

Section 3 provides:

“The public school fund of the state shall forever remain inviolate and intact; the interest thereon, only, shall be expended in the maintenance of the schools of the state, and shall be distributed amongst the several counties and school districts of the state, in such manner as may be prescribed by law. No part of this fund, principal or interest, shall ever be transferred to any other fund, or used or appropriated except as herein provided. The state treasurer shall be the custodian of this fund, and the same shall be securely and profitably invested as may be by law directed. The state shall supply all losses thereof that may in any manner occur.”

Section 10, *inter alia*, provides:

“The general assembly shall, at the earliest practicable period, provide by law that the several grants of land made by congress to the state shall be judiciously located and carefully preserved and held in trust subject to disposal, for the use and benefit of the respective objects for which said grants of land were made, and the general assembly shall provide for the sale of said lands from time to time; and for the faithful application of the proceeds thereof in accordance with the terms of said grants.”

The statutory provision concerning the apportionment of the school fund is as follows:

“It shall be the duty of the state auditor to notify the superintendent of public instruction of the amount of money in the state treasury to the credit of the public school income fund on the thirtieth day of June and December in each year. Within fifteen days after receiving such notification, the superintendent of public instruction shall apportion said

fund among the several counties of the state, from which reports have been received by said superintendent, as provided in this act, in proportion to the school population as shown by the report of each county for the year next preceding such apportionment, making such deductions as are provided in section 9 of said chapter. And the superintendent of public instruction shall certify said apportionment to the state auditor, and upon such certificate the auditor shall draw his warrant on the state treasurer in favor of the county treasurer of each county for the amount due said county. The superintendent shall also certify to the superintendent of each county the amount apportioned to such county."

Revised Statutes of 1908, Section 5887.

A constitutional amendment adopted by vote of the people in 1909, provided for the creation of a bonded indebtedness on behalf of the state for the purpose of funding certain outstanding warrants of the state, and to provide for the issue and payment of said bonds. (Session Laws of 1909, p. 315.)

This was an amendment to Article XI, Section 3, of the State Constitution, and authorized the state to contract a debt by loan for the purpose of paying the principal and interest of all the outstanding warrants issued by this state during the years 1887, 1888, 1889, 1892, 1893, 1894 and 1897; said debt to be evidenced by registered coupon interest bearing funding bonds to an amount not exceeding \$2,115,000.00, or so much thereof as may be necessary to pay said warrants and interest thereon. The validity of this amendment was sustained by our Supreme Court in the case of *Post Co. vs. Shafroth*, 53 Colo. 129. Said amendment was held not to be in conflict with Section 3, Article IX, of the Constitution.

It appears that a large amount of these warrants was held in the state permanent school fund as an investment, the interest thereon amounting to \$600,900.00.

Said amendment further provided:

"Said bonds to an amount equaling the principal of said warrants now held by the public school fund shall be registered by the state auditor and state treasurer in the name, for the benefit of and payable only to the said fund, and shall not be transferable."

Bonds were issued to the amount of the principal of the warrants so held by the Permanent Fund, being stamped across the face thereof "non transferable" as required by Section 10 of said amendment, and such bonds were placed to the credit of the permanent school fund.

It was further provided by said amendment that:

"All such bonds to an amount equaling the interest on said warrants now held in the school fund shall be sold by the state treasurer at not less than par and accrued interest; and the proceeds thereof paid into the school fund, and distributed to the several counties and school districts of the state for school purposes, in the proportions and in the manner provided by law."

Bonds representing the interest on said warrants and to the amount of \$600,900.00, were accordingly issued, and said sum of money, as provided by constitutional provisions, belonged to the income fund. But as will be observed, the constitutional mandate hereinbefore mentioned, provided that the state treasurer should be the custodian of said bonds, and required the said treasurer to sell said bonds at not less than par and accrued interest, and that the proceeds thereof be paid into the school fund and distributed to the several counties as provided by law for school purposes.

So far as I have been able to learn, these bonds were not so sold and the proceeds placed in the income fund and distributed as required by said constitutional amendment. Why said bonds were not so sold and the proceeds thereof distributed as provided by law, I do not know, however, I am informed that the then state treasurer was unable to sell these bonds at par and accrued interest, but in lieu thereof they were improperly credited to the income fund. It was only the proceeds from the sale of the bonds that were authorized to be placed in that fund for distribution among the counties. As this was not done at the time, I see no reason why the bonds referred to may not now be sold by the present state treasurer, and the proceeds thereof be placed in the income fund, as by law directed, and distribution be made of the same. Such sale should be made at the best price obtainable, not less, however, than par and accrued interest.

In my judgment, this may be done by the state treasurer by virtue of the constitutional amendment referred to, without any other authority or direction. He would only be carrying out the mandate of the people clearly expressed in the Constitution, and the money would be used for the specific purposes for which it was intended, all of which should have been done many years ago, for the law does not contemplate that this money shall be used for investment purposes.

During the biennial period of 1919-1920, I understand that \$50,900.00 has been distributed to the schools which reduced the bonds to \$550,000.00.

In 1916, an initiated measure was adopted by vote of the people concerning the investment of public school funds in which it is provided:



“All school funds of the state, whether permanent or income, unless otherwise disposed of by law, shall be invested as directed by the state board of land commissioners.”

Then follows certain enumerated securities in which such investments may be made. Session Laws of 1917, p. 446.

As heretofore stated, the bonds now under consideration were not intended for investment purposes. Furthermore, they do not come under the direction of the State Board of Land Commissioners for the reason that the law provides that these particular bonds shall be “otherwise disposed of” in a specified manner.

The state treasurer is charged with the responsibility of selling these bonds and properly applying the proceeds without any further authority than that contained in the constitutional amendment of 1909.

Therefore, in answer to your specific question, I have to say that in my opinion, the State Board of Land Commissioners has no authority to order the treasurer to transfer said bonds amounting to \$550,000.00 by purchasing the same for the Permanent Fund and distributing the proceeds through the income fund.

It is the duty of the treasurer to sell to the best advantage subject to the limitations prescribed, whoever the purchaser may be, but he is not required to sell to any particular person or persons, nor to any specified fund. But, if your board, under the provisions of the law of 1917, subject to the requirements thereof, should consider these bonds a safe and profitable investment, and that it is good business policy so to do, I know of no legal objection to the board making a bid for said bonds and attempting to negotiate a sale for the same. This seems to me to be a matter to be determined by the officials concerned.

### 302.

### TAXATION

Chas. H. Haines, May 17, 1922.

Property upon which a tax for a certain year has been paid, cannot be again assessed for the same year, even if the property was valued much too low.

### 303.

### GIFT ENTERPRISES

The Beet Sugar Products Co., May 22, 1922.

Trading stamps may be issued notwithstanding sections 4120-24, R. S. 1908, if distribution of premiums involves no element of chance or lottery.



**304. CORPORATIONS**

P. D. Connor, May 23, 1922.

Where a corporation voted on March 20th to dissolve and on May 5, tendered for filing with the Secretary of State, a copy of the statutory notice of the dissolution, such corporation is liable for the flat tax that became due May 1st.

**305. PLUMBERS**

John B. O'Rourke, May 23, 1922.

Sec. 9 and 10, Ch. 107, S. L. 1917, applies to cities of the class of Durango.

**306. SCHOOLS**

E. E. Gillard, June 1, 1922.

It is within the discretion of a county superintendent to allow a petition for the disconnection of certain lands in a school district and the formation of a new district, subject to review by the State Board of Education in case of an abuse.

**307. COURTS OF RECORD**

Fred W. Burger, Clerk District Court, June 2, 1922.

Under Ch. 88, S. L. 1921, intervenors are required to pay the same advance court fees as are required of plaintiffs.

**308. STATE SOLDIERS' AND SAILORS' HOME**

Julia E. Killam, Sec'y, June 2, 1922.

When the commander of the G. A. R. ceases to be such commander, he ceases to be a member of the Board of Commissioners. He does not hold over until his successor qualifies.

**309. TRADE-MARKS**

Leonard Maier, June 2, 1922.

A trade-mark becomes the exclusive property of one who has first appropriated and used it to indicate ownership.

**310. MOTOR VEHICLES**

Nelson, Dickenson & Eubank, June 2, 1922.

If seizure were made under search warrant and proof showed that car was being used in violation of liquor laws the courts would probably uphold a forfeiture as against the rights of a mortgagee under a mortgage that permitted the mortgagor to retain possession and use of the car.

See: White Auto Co. vs. Collins (Ark.), 206 S. W. 748.

Also: Hoover et al. vs. People, 68 Colo. 249, where neither the mortgagee nor owner had notice or knowledge of unlawful use of car.

### 311. **SCHOOLS**

Mrs. Lou C. Beaman, June 3, 1922.

In a consolidated district where the directors were elected until the next annual school election, at which time only a treasurer was elected instead of a President and Secretary and Treasurer, and where a special election was not called in due time, the County Superintendent of Schools should, as a matter of policy, appoint the two members of the board who are holding over, until the next annual election, at which time all three directors are to be elected.

### 312. **COMPENSATION INSURANCE FUND**

A. M. Stong, June 7, 1922.

Interest earned by the State Compensation Insurance Fund and not required to be used in the payment of expenses under Chapter 251, S. L. 1921, may be invested in the same manner as the principal of such fund.

### 313. **SCHOOLS**

Katherine L. Craig, Supt. Pub. Instruction, June 9, 1922.

An Indian, having become a citizen of the United States, may become a citizen of Colorado and hold the office of school director if he satisfies the provisions of the Federal Act as to living apart from his tribe, and possesses the qualifications set forth in our Constitution.

### 314. **STATE SOLDIERS' AND SAILORS' HOME**

H. M. Minor, June 9, 1922.

The Commander of the G. A. R. when a citizen of Colorado does not become a qualified member of the Board of Commissioners until he is duly commissioned by the Governor and has filed the bond required by Sec. 6036, R. S. 1908.

### 315. **SCHOOLS**

M. L. Youmans, June 10, 1922.

A union high school district formed in fourth and fifth class counties cannot bond itself as a whole for the erection of a high school building.

**316. STATE SOLDIERS' AND SAILORS' HOME**

A. W. Hogle, June 13, 1922.

Wives of veterans of the various wars are eligible for admission to Soldiers' and Sailors' Home if the same were married to the veterans prior to 1890, or if they are now past the age of 50 years.

**317. CRIMINAL LAW**

J. Elzia Johnston, June 13, 1922.

Plea of guilty supported by evidence of a confession by the defendant of the crime of murder in the first degree sufficient to permit infliction of the death penalty, under

Sec. 1624, R. S. 1908.

**318. EDUCATIONAL LOAN FUND**

Hon. O. H. Shoup, Governor, June 14, 1922.

Funds assigned for loans under Colorado State Educational and Loan Fund and not claimed by parties to whom assigned, revert to fund and may be reassigned to other applicants at the discretion of the Loan Board, created by Ch. 23, S. L. 1919, p. 151.

**319. ENGINEERS EXAMINERS**

A. J. McCune, June 16, 1922.

Subject to the approval of the Secretary of State, the State Board of Engineers Examiners may deposit technical books and publications purchased under Sec. 16, Ch. 119, S. L. 1921, in the Denver Public Library.

**320. BANKS—PAYMENT OF TAXES TO**

Grant McFerson, June 16, 1922.

Where taxpayers pay their taxes to a bank to be remitted to the county treasurer, and the bank fails before such remittance is effected, the county authorities may recover such taxes from the taxpayers, but the taxpayers have a preferred claim against the insolvent bank for moneys advanced to it for such payment of taxes.

**321. ESCHEAT ESTATES**

H. M. Baker, June 23, 1922.

Real property in escheat estates should be sold by the administrator or executor under order of court, and proceeds of sale paid to state treasury. Ch. 81, S. L. 1913.

**322. SCHOOLS**

Wm. A. Darder, June 24, 1922.

Electors in consolidated districts composed of districts of the third class, have the right to select the site for the school house.

**323. ELECTIONS**

Geo. C. Twombly, June 26, 1922.

Registration committees in outlying precincts should sit in accordance with the days specified in Section 1, Chapter 78, S. L. 1913, instead of those mentioned in Sec. 2169, R. S. 1908.

**324. TAXATION**

Alice J. Young, June 26, 1922.

Owner of land is entitled to pay taxes due thereon without redeeming the land from an outstanding tax sale certificate.

**325. MARKETING**

L. M. Taylor, June 26, 1922.

The division of Marketing created by Chapter 173, S. L. 1921, has no supervision over inspection of cantaloupes and melons, provided for by Ch. 175, S. L. 1921.

**326. TAXATION**

A. M. Richards, July 1, 1922.

An irrigation reservoir, if owned by a mutual company, is not subject to taxation.

**327. PUBLIC FUNDS**

O. H. Shoup, July 11, 1922.

The Governor has no power to contribute public funds to promote the initiation of a constitutional amendment.

**328. SCHOOLS**

J. H. Berkstresser, July 11, 1922.

The wife of a qualified elector cannot vote unless she has paid a school tax in the year next preceding the election.

Petitions to enter and withdraw from district, covered by Sec. 5948, R. S. 1908.

329.

**INHERITANCE TAX**

Johnson & Robison, July 19, 1922.

Executory land contracts for sale of realty in another state, are subject to inheritance tax as personal property by this state, where decedent was a resident of Colorado.

330.

**SCHOOLS**

J. W. Dollison, Co. Attorney, July 25, 1922.

A school district forming part of a consolidated school district cannot withdraw therefrom, in the absence of statutory authority for such action.

Opinion to Homyer, Oct. 30, 1919; opinion to Cole, Sept. 3, 1915; State vs. School Dict., 78 Ore. 188, 152 Pac. 221; Fennell vs. Lannon, 46 Okla. 519, 149 Pac. 144.

331.

**SCHOOLS**

Katherine L. Craig, State Supt. Pub. Instruction, July 27, 1922.

Districts are not compelled to maintain nine months of school under Ch. 214, S. L. 1921. The directors have power to fix the length of a school term subject to the constitutional provision that there shall be at least three months of school.

332.

**COUNTY COMMISSIONERS**

Geo. W. Elley, July 31, 1922.

A county commissioner who removes from his district to the county seat so that he may give better attention to his duties as chairman of the board, but who retains his residence in his district, is not disqualified for re-election.

333.

**SCHOOLS**

E. R. Kielglass, Aug. 5, 1922.

Annual and semi-annual reports of school directors are subject to the provisions of Chap. 169, S. L. '21, being an Act concerning legal notices, advertisements and publications.

334.

**SCHOOLS**

Geo. B. Bilsborrow, Aug. 7, 1922.

A majority of those voting and not a majority of all the electors of a Union H. S. District is necessary to exempt such districts from a county high school tax under the provisions of Sec. 1, page 699, S. L. 1921.



**335. MOTOR VEHICLES**

Carl S. Milliken, Sec'y of State, Aug. 8, 1922.

Motorcycles are automobiles within the meaning of the provisions of Ch. 7, S. L. 1919 (extra) dealing with the recording of bills of sale and other papers relative to transfer.

**336. ELECTIONS**

J. Etta Coons, Aug. 9, 1922.

The "10 per cent or more of the votes of the duly accredited delegates to an assembly" necessary for the designation of a candidate on the primary ballot, means 10 per cent of the votes of the duly accredited delegates, whether they appear or not.

**337. ELECTIONS**

B. J. Ragatz, Aug. 9, 1922.

Where the voting precincts are not included within a city of over 5,000 inhabitants, but are partly in and partly out of it, registrations are governed by Section 2167 to 2173, R. S. 1908.

**338. LOANS FROM SCHOOL FUND**

Geo. Stephan, Register, St. Land Board, Aug. 15, 1922.

Loans from the School Fund may be made on non-contiguous tracts if they form a part of the same farm unit.

**339. ELECTIONS**

Geo. H. Shaw, Aug. 16, 1922.

Days and times at which nominating petitions, acceptances, certificates of designation and acceptances thereof, should be filed.

**340. TAXATION**

F. L. Hampton, Aug. 22, 1922.

The additional 10 per cent required to be collected in case of distraint warrants for personal property taxes, must be accounted for as other fees by the officer making the collection.

**341. ELECTIONS**

G. M. Green, Aug. 23, 1922.

The county clerk and not the county commissioners has the power to select the printer for the primary and general election ballots.

**342. STATE BOARD OF LIVE STOCK INSPECTION**

State Bd. Stock Inspection Commissioners, Aug. 24, 1922.

The State Board of Live Stock Inspection Commissioners may make an order to prevent shipment of tubercular cattle from the public stockyards.

**343. ELECTIONS**

Status of men receiving hospitalization, with respect to their right to vote:

- (a) On Federal reservations;
- (b) At other places.

Mr. Morrison Shafroth, Attorney-at-Law, Aug. 25, 1922.

In your letter of the 15th inst., you request a ruling of this department on the right of those men in this state who are receiving hospitalization under the War Veterans Bureau, to vote.

It is suggested that our statutes "only require that they should have resided in the state for one year, in the county for ninety days, in the city thirty days, and in the ward or precinct ten days." If what is meant by this is, that the intent of the individual is to be disregarded in arriving at a decision respecting his right to vote, I cannot agree with you. Section 1, Article VII, of the Constitution provides:

"QUALIFICATIONS OF ELECTOR.—Every person over the age of twenty-one years, possessing the following qualifications, shall be entitled to vote at all elections: He or she shall be a citizen of the United States, and shall have resided in the state twelve months immediately preceding the election at which he offers to vote, and in the county, city, town, ward, or precinct, such time as may be prescribed by law."

Section 2146, R. S. 1908, in elaborating the above provision declares:

" \* \* \* *Second.*—He shall have resided in this state one year immediately preceding the election at which he offers to vote; in the county ninety days; in the city or town thirty days, and in the ward or precinct ten days."

In construing the above our courts have announced the doctrine that more than the mere fact of residence is implied therein. The fact of residence plus the necessary intent to make this state one's domicile, are the two elements that combine in determining the right of an individual to vote. This is declared in the following language in *Sharp vs. McIntire*, 23 Colo., 99 at 102:

"We think the residence therein contemplated is synonymous with 'home' or 'domicile,' and means an actual settlement within the state, and its adoption as a fixed and permanent habitation; and requires not only a personal presence for the requisite time, but a concurrence therewith of an intention to make the place of inhabitancy the true home; and that one who has made a home or domicile in some other state or territory where his family reside, cannot, by a sojourn here on business or pleasure, however long, without abandoning such former domicile, acquire a residence in the constitutional and statutory sense. Such is the meaning and signification given to the word by the courts of other states when used for a like purpose in their constitutions."

Other cases supporting the above view are *Kellog vs. Hickman*, 12 Colo. 256; *Jain vs. Bossen*, 27 Colo. 423, 425; *People vs. Turpin*, 49 Colo. 224, 228. In other words, the mere fact of residing in this state the statutory period of time, without the necessary intent, would not qualify these individuals to vote.

It is suggested that the answer to the above problem depends upon whether or not these men are in military service. That feature can be disregarded, for I am assured by the United States Veterans Bureau that the "beneficiaries are in no way connected with military service."

Other questions, however, that are to be considered in this connection, are, (1) What effect on the gaining of a residence is the fact that some of these men reside in a military reservation, subject to the exclusive jurisdiction of the Federal government? (2) What is the effect of Section 4, Article VII, which provides "for the purpose of voting and eligibility of office, no person shall be deemed to have gained a residence by reason of his presence, or lost it by reason of his absence \* \* \* while kept at public expense in any poorhouse or other asylum. \* \* \*?" (3) Can these men be said to have the necessary intent to establish a residence?

It seems to be well settled by the weight of authority, that the question of whether or not a man has resided on a Federal reservation, providing he has the necessary domiciliary intent, is an important one. The rule is definitely established in 20 C. J. 74, as follows:

"Since land which has been ceded by the state to the United States for the use of some department of the general government, without any reservation of jurisdiction except the right to serve civil and criminal process thereon, ceases to be a part of the state, such land cannot become a voting residence in the state in which it is situated, until it is receded to the state by Congress."

See cases cited therein.  
McCrary on Elections, p. 35.

In 1908 this department issued an opinion on this subject, a copy of which is herewith enclosed, especially with reference to Ft. Lyons, near Las Animas, Colorado. That being a government reservation, the men residing thereon, even if they had complied with the necessary period of time and possessed the necessary intent, cannot secure a voting residence in this state. This reservation, being subject to the exclusive jurisdiction of the United States, is to be regarded as distinct from the State of Colorado. Nor does it make any difference whether those residing upon that reservation are civilians or in the military service.

State vs. Willett, 117 Tenn. 334, 344, 348;  
Notes, 20 C. J., 74.

It might be added that the Fitzsimons Hospital is not a Federal reservation, the United States government having leased the land in question from the Denver Civic and Commercial Association, at a nominal yearly rental; hence what is said above with reference to Ft. Lyons does not apply to it.

Turning to the second consideration. I find that there is some conflict of authority on this question; the majority view holding with the idea that the intent of the individual is to be considered in interpreting this constitutional provision:

“It is a general rule, affirmed by constitutional or statutory provisions in some states, that as a rule persons supported in institutions maintained wholly or partly at public expense or by charity neither lose their right to vote at the places of their former residence nor acquire the right to vote wherein such institutions are located. \* \* \* Since, however, the question of intention is important, according to the weight of authority when a person voluntarily abandons his residence and becomes an inmate of a public or charitable institution with the intention of making it his permanent residence, he becomes a qualified voter in the precinct wherein such institution is located after the required period of residence. \* \* \*.”  
20 C. J. 72.

As representative of the minority view. I refer you to Powell vs. Spackman, 7 Idaho 692, 65 Pac. 503, and as representative of the majority view, Cory vs. Spencer (Kans.) 63 L. R. A. 275; Day vs. Salem, 65 Oregon. 114, Annotated Cases. 1915A, 1011, and the dissenting opinion in the case of Powell vs. Spackman, supra:

“That provision of our constitution is merely declaratory of the common law, and does not stand in the way of an inmate of said home acquiring therein a residence for voting purposes. It was made to pro-



teet his right to vote, and not to disfranchise him, and it ought to be so construed. While residing at the soldiers' home, those old veterans are not temporarily absent from home. They are at home. They are there to remain, with the right to remain permanently. They have abandoned the place from whence they came without any intention of returning, and have established their permanent residence at said home in good faith. They had a right to do those things. They had a right to choose, and did those acts voluntarily." *Powell vs. Spackman*, 65 Pac. 515.

It may be remarked in passing, that while it has been assumed that the veterans' hospitals come within the category of eleemosynary institutions, to which reference is made in the constitutional provision, it is readily apparent that a very good argument can be made to the effect that they do not come within its purview.

A careful consideration of the majority and minority views and the reasoning therein, compels me to adopt the conclusion expressed in the majority cases, not only as being better reasoned, but as expressing the more modern doctrine. Added impetus is given to this position by the inferences to be gathered from the case of *Parsons vs. People*, 30 Colo. 388, 391, 392, which interprets this self same provision with respect to the residence of students. I believe, therefore, that the answer to the second consideration narrows itself down into the question of the intent of the person claiming the right to vote, which leads me to the third consideration.

Whether or not these men have the necessary intent to secure a voting residence, is a question of fact in each individual case. There are many definitions in the Colorado cases, *supra*, elaborating upon domiciliary intent. In the case of *Shaeffer vs. Gilbert*, 76 Maryland 66, 20 Atlantic 434, it was thus expressed:

"It does not mean, as we have said, one's permanent place of abode, where he intends to live all his days, or for an indefinite or unlimited time; nor does it mean one's residence for a temporary purpose; \* \* \* but means, as we understand it, one's actual home in the sense of having no other home whether he intends to reside there permanently or for a definite or indefinite length of time."

To be repetitious, each individual case must be disposed of on its own merits and I can offer you no aid in arriving at a conclusion, save to suggest that each case be scanned somewhat more closely than ordinarily for the obvious reason that most of these men are here for the purpose of effecting a cure of their disease. The intent to remain here until health is restored, without anything more, would not, as I understand, constitute the necessary intent.



It must be, as was said in the Maryland case, the desire to make it "one's actual home."

I have gone at length into this matter because of its importance to the men receiving hospitalization and I trust that the views above outlined may be of service to you.

**344. ELECTIONS**

P. W. Cameron, Aug. 29, 1922.

County Commissioners are not obliged to appoint a majority of the election judges from the political party which carried the last election.

**345. COUNTY FUNDS**

Geo. C. Twombly, Aug. 29, 1922.

Balance of fund created for special purpose may be transferred to general county fund upon completion of special purpose.

**346. INSURANCE**

Jackson Cochrane, Aug. 31, 1922.

Firemen and policemen are not in one hazardous occupation, as used in Sec. 29, Fraternal Code (Ch. 139, S. L. 1911).

**347. INSURANCE**

Jackson Cochrane, Sept. 1, 1922.

Procuring loan of money without payment of agreed commission on loan, constitutes violation of Sec. 55 of Insurance Code.

**348. TAXATION**

Geo. Stephan, Sept. 1, 1922.

State school lands are not subject to taxation for local improvements.

Legislature may provide for payment by special assessments.

The Permanent School Fund may not be expended for improvements upon school lands.

**349. SCHOOLS**

Laura Burehsted, Sept. 1, 1922.

The Board of School Directors may certify that school year will be nine and one-half months.

\$75.00 may be drawn for that period for teacher's salary.

**350. PUBLIC LANDS**

Geo. Stephan, Sept. 2, 1922.

Certificates for purchase of state lands descend to heirs of decedents and not to administrator or executor. Such certificates are to be disposed of as real estate upon death of holder thereof.

**351. STATE HOME AND TRAINING SCHOOL  
FOR MENTAL DEFECTIVES**

Dr. A. P. Busey, Sept. 2, 1922.

A child duly committed by court to the State Home and Training School for Mental Defectives should not be released upon demand of parent, but only on order of court.

The determination of the question of special instruction to various groups of children is within the discretionary powers of the Superintendent and Board of Commissioners.

**352. STATE BOARD OF LAND COMMISSIONERS**

Hon. George Stephan, Sept. 7, 1922.

The State Land Board has no authority to make loans upon lands subject to reservations of mineral rights.

**353. DRAINAGE DISTRICTS**

Ralph L. Carr, Sept. 11, 1922.

The county treasurer is not entitled to commissions for receiving money realized from the sale of drainage district bonds.

**354. PUBLIC LANDS**

Geo. Stephan, Sept. 12, 1922.

Where successful bidder does not complete sale, land must be resold rather than sold to next highest bidder.

**355. SCHOOLS**

Margaret Martin, Sept. 14, 1922.

There is no statute covering the withdrawal of lands from a consolidated district.

**356. BANKS**

E. A. Johnson, Sept. 15, 1922.

A ruling of the Comptroller of the Currency that national banks may establish branch banks in states where the local statute permits state banks to establish branches, has no effect in Colorado.

**357. SCHOOLS**

Minnie E. Bock, Sept. 15, 1922.

County Superintendents are entitled to charge mileage not to exceed 15c per mile for the distance actually and necessarily traveled in the performance of duty, regardless of whether or not he travels in a county car.

**358. NOTARIES PUBLIC**

U. S. Fidelity & Guaranty Co., Sept. 16, 1922.

When a notary public removes to another county and takes out a commission as notary in that county, he abandons his former office, and if he should return to the county for which his first commission was issued, it would be necessary for him to take out a new commission, even if his first commission has not expired.

**359. COUNTIES**

D. P. Howard, Sept. 16, 1922.

Counties are not prohibited by Sec. 1220, R. S. 1908, from issuing so-called warrants for road work in anticipation of funds to be received from the State Highway Department, on account of contracts between that department and the county, for doing such work.

**360. ELECTIONS**

E. H. Ackerly, Sept. 18, 1922.

1. Name of nominee who has been elected by writing in the name on ballot at primary, should be placed on ballot for the general election.

2. Party whose name is written in on the general election ballot and receives majority of the votes, would be declared legally elected.

**361. ELECTIONS**

John White, Sept. 19, 1922.

1. There is no necessity for nominee at primary to file acceptance.

2. Nominee at primary election may withdraw or resign.

**362. TAXATION**

Harry E. Mast, Sept. 19, 1922.

Feeding in Transit Act, Ch. 137, S. L. 1915, applies merely to cattle imported into the state and not cattle transferred from one county to another county within the state.

**363. UNIVERSITY OF COLORADO**

Dr. George Norlin, Sept. 21, 1922.

The Hospital and Medical School, although provided for by separate appropriation, are required to be erected at the same place, and the Board of Regents is authorized to install certain joint features of construction if economy of construction and maintenance would thereby result.

**364. INSURANCE**

Jackson Cochrane, Sept. 22, 1922.

Policies other than for fire, written by fire insurance company, must contain provision for equitable cancellation under Section 61 thereof.

**365. HIGHWAY DEPARTMENT**

Maj. L. D. Blauvelt, Sept. 22, 1922.

A contract made subject to provisions of sections 5407-5408, R. S. 1908, does not protect creditor who furnished road machinery to sub-contractor.

**366. ELECTIONS**

Jos. J. Watson, Sept. 23, 1922.

If it is necessary for Board of County Commissioners to divide polling places and election precincts, they may do so thirty days prior to the general election, under Sec. 2229, Election Laws, page 111.

**367. TOWNS AND CITIES**

John C. Vivian, Sept. 26, 1922.

One publication of ordinance before passage is all that is necessary in towns of second class, provided it is published at least ten days before passage, under Section 6674, R. S. 1908.

See also *People v. Grant*, 48 Colo. 156, 158.

**368. ELECTIONS**

Geo. F. Dunklee, Sept. 28, 1922.

A district judge is not a candidate for a state office within the meaning of the Primary Act which requires candidates for the various state offices to aid in formulating the State Primary Platform.

**369. STATE BOARD OF HEALTH**

Dr. Tracy Love, Sept. 29, 1922.

Where a sanitarium does not comply with the terms of its application and license, but goes beyond the scope of the same, the State Board of Health is justified in requiring compliance therewith, and in event of refusal, to revoke the license.

**370. JUSTICES OF THE PEACE**

H. W. Murray, Oct. 4, 1922.

A Justice of the Peace cannot remit a sentence, pardon or parole a defendant after the latter has started to serve the same.

**371. ELECTIONS**

Hon. Carl S. Milliken, Oct. 5, 1922.

When there are two petitions purporting to make nominations for a political party, the one tended by the regular organization of the party should be accepted, even though the other had been previously filed.

**372. TOWNS AND CITIES**

A. V. Coonradt, Oct. 5, 1922.

Cities, towns, etc., must carry Workmen's Compensation Insurance irrespective of number. A town or city employing no regular employes but those who come at intervals, is engaged in the regular business of a city, and therefore not a casual employe.

**373. EMPLOYMENT AGENTS**

J. L. Foreman, Oct. 8, 1922.

Sec. 4239, R. S. 1908, governs the fees of employment agents. A steward cannot be said to be an artisan; consequently, an employment agent may charge what he desires for securing such a position.

**374. COUNTY CLERK AND RECORDER**

Carl S. Milliken, Oct. 9, 1922.

A county clerk and recorder in this state may make photographic records instead of recording instruments in the usual manner, under Ch. 104, p. 400, S. L. 1917.



**375. ELECTIONS**

G. M. Laird, Oct. 9, 1922.

In counties where there is but one newspaper, publication should be twice instead of four times.

**376. SCHOOLS**

H. A. Caldwell, Oct. 11, 1922.

Under Rev. Stat., Sec. 5990, a contract by a school board employing a teacher who has no license to teach is absolutely void.

Sedgwick County v. Johnson, 26 C. A. 433; 27 C. A. 300.

A school board has no discretionary power to employ a teacher who is not qualified by law.

Catlin v. Christie, 15 C. A. 291; 2 Colo. Dec. 336; 63 Pac. 328.

**377. ELECTIONS**

E. A. Jackson, Oct. 13, 1922.

At a general election, only those who are suffering from absolute and total disability can be assisted while preparing their ballot.

At a primary election, a voter who is not physically disabled, but who does not understand the English language or does not read or write, may be assisted as before the passage of the Headless Ballot Law.

**378. ELECTIONS**

F. S. Carpenter, Oct. 14, 1922.

In no case shall the voter write on his party ballot the name of any candidate appearing on any other party ballot.

Sec. 11, Direct Primary Law. (Election Laws 1917-18, p. 34.)

See letters to John Adcock, Sept. 14, 1918, No. 351, and L. M. Markham, Sept. 28, 1918, No. 357.

**378-a. CHILD WELFARE BUREAU**

Arthur M. Stong, State Treasurer, Oct. 14, 1922.

Moneys received by the state from the Federal Government under the Sheppard-Towner Act should be kept in a separate account, under a proper heading.

**379. ESCHEAT FUNDS**

A. M. Stong, Oct. 17, 1922.

Under Ch. 81, S. L. 1913, the provision that the state shall be answerable for "balances" paid into the treasury "without interest," means that the state itself is not required to put such moneys out at interest or to pay interest thereon.

When interest-bearing obligations, such as U. S. bonds, are deposited in the state treasury under authority of the above act, the same should be repaid in *specie*, or the avails thereof fully accounted for, including any interest paid to the state thereon, less any inheritance tax due the state.

**380. ELECTIONS**

Carl S. Milliken, Oct. 18, 1922.

It is a general rule in computing time that the last day be excluded and the first counted.

The period *within* which an act is to be done, and the period *without* which an act is to be done, discussed in this opinion.

**381. SCHOOLS**

T. H. Hooper, Oct. 19, 1922.

A school district uniting with a Union High School which voted to be exempt from county high school tax, is likewise exempt from county high school tax by reason of said act of union.

**382. INSURANCE**

Jackson Cochrane, Oct. 19, 1922.

Foreign insurance companies need not file bond before offering stock for sale in this state.

**383. SCHOOLS**

C. W. Martin, Oct. 20, 1922.

The pro rata share of the Public School Income Fund allotted to each county should not be deducted by county commissioners from the amount of money certified by county superintendent of schools under Chapter 214, S. L. 1921.

**384. SCHOOLS**

W. R. Kelly, Oct. 20, 1922.

Fiscal year referred to in Sec. 5, Ch. 214, S. L. 1921, means the county fiscal year, commencing January 1st and ending December 31st.

385.

**CIVIL SERVICE**

Civil Service Commissioner, Oct. 20, 1922.

The State Civil Service Commission has no power to control the salaries payable to officers or employes of the State University.

385A.

**INDEBTEDNESS**

Officers of state institutions are not authorized to incur or contract any indebtedness for, on behalf of or in the name of said state institution or in the name of the state, in excess of the sum appropriated by the General Assembly for the use or support of such institution for the fiscal year.

Mr. J. M. Lawrence, Adjutant, Colorado Soldiers' and Sailors' Home, Monte Vista, Colo., Oct. 25, 1922.

I have your letter of the 23rd inst., stating that the Board of Commissioners of the Home, at its regular session October 10th passed a resolution authorizing the Commandant, and in his absence the adjutant and acting commandant, to borrow Ten Thousand Dollars (\$10,000) to be placed in the contingent fund of the Home, and asking if vouchers should be made or receipts merely taken for sums paid out of said fund.

Assuming that it is the desire of the Board to obey the law and complying with your request to place you right in this matter, I desire to call your attention to certain statutory provisions relating to this subject which probably have been overlooked.

In 1889 the General Assembly enacted a statute approved April 12, 1889, entitled, "An Act to prevent the incurring of debts by or on behalf of State Institutions, and to prescribe a penalty therefor," which provides:

"That it shall be unlawful for any officer of any state institution of this state to incur or contract any indebtedness for, on behalf of, or in the name of such state institution, or in the name of the state, in excess of the sum appropriated by the General Assembly for the use or support of such institution for the fiscal year. Nor shall any officer of any state institution draw any money from the state treasury unless the same shall be absolutely needed and required by such institution at the time, and then only upon the warrant of the State Auditor."

"Any person offending against the provisions of this act shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not exceeding three hundred dollars, in the discretion of the court."

"The term 'Officer' as used in this act shall be taken to include members of the various boards created by law to govern or supervise the respective state institutions." See Revised Statutes 1908, Sections 6122, 6123, 6124; Session Laws 1889, page 380.

You will observe that a violation of this act is made a *misdemeanor* with a penalty annexed thereto.

Section 6236, Revised Statutes 1908, reads:

"In all cases of accounts audited and allowed against the state, and in all cases of grants, salaries, pay and expenses, allowed by law, the auditor shall draw a warrant on the treasurer for the amount due, in the form required by law; *Provided*, An appropriation has been previously made for such purpose."

Section 6237 Revised Statutes 1908, is as follows:

"No warrant shall be drawn by the auditor, or paid by the treasurer, unless the money has been previously appropriated by law: nor shall the whole amount drawn for or paid under one head ever exceed the amount appropriated by law for that purpose."

It is further provided by statute that:

"In all cases where the laws recognize a claim for money against the state, and no appropriations shall have been made by law to pay the same, the auditor shall audit and adjust the same, and when the said claim shall have been approved by the governor and attorney general, he shall give the claimant a certificate of the amount thereof, under his official seal if demanded, and shall report the same to the General Assembly, with as little delay as possible, giving a statement in tabular form of the number, date of issue, and amount of each certificate, and for what purpose issued. No indebtedness shall be incurred, or certificate of indebtedness issued, for any purpose for which an appropriation has been made and exhausted, unless the necessity for the creating of such indebtedness, and the issuing of such certificate, is caused by a casualty happening after the making of the appropriation; and in all such cases the question of incurring such indebtedness shall be first submitted to the governor and attorney general, for their approval." Revised Statutes 1908, Sec. 6239; Session Laws of 1885, Sec. 5, page 205.

I am therefore compelled to advise that such a loan as you mention should not be attempted or consummated, and if the loan has been negotiated it should be immediately canceled because there is no authority in the statutes permitting a proceeding of this kind.

Section 6239 provides that indebtedness may be incurred and certificates issued therefor under certain circumstances. That is, when the appropriation has been exhausted and the necessity for creating such indebtedness and the issuing of such certificates is caused by a "casualty happening after the making of the appropriation; and in all such cases the question of incurring such indebtedness shall be first submitted to the governor and attorney general for their approval."

The foregoing statutes seem to fully cover the question which you have submitted to this Department, and I respectfully suggest that your procedure in this matter be in accordance therewith.

**386.****ELECTIONS**

Geo. H. Kidder, Oct. 26, 1922.

Under Act of Congress approved September 22, 1922, American women married to aliens prior to that date must be naturalized before they are qualified to vote.

**387.****ELECTIONS**

**Procedure to restore names to new registration records where original records have been lost or destroyed.**

Oct. 26, 1922.

Hon. Joseph W. Hawley, District Attorney, Trinidad Colo.,

I have your telegram dated October 25, 1922, stating that the original registration books and all records of registration of the town of Branson were destroyed by fire. You ask what procedure should be adopted relative to registration and voting at the next general election.

I am unable to find any statutory provision prescribing the procedure to be followed in the event of loss or destruction of registration records.

It is my opinion that the board of registration should be provided with new registration books and records, and the board of registration should list on the new books so far as may be ascertained with reasonable certainty, all names appearing on the registration books which were destroyed. This list may be made up from the recollection of the board or any evidence satisfactory to it. Therefore, it is not necessary that the voters appear in person.



If an individual appears and makes proper oath or affidavit before the board that his name was on the registration books which were destroyed and the registration board is not satisfied that the oath is false, the name should be added to the new registration books.

If qualified voters should appear on the election day and submit satisfactory proof that their names were on the original lists, their names should be placed on the new list and they should be allowed to vote.

The views herein expressed are in accord with the decisions announced in *State of Louisiana vs. Lebleu*, 126 La. 616; 52 So. 849; 28 L. R. A. (N. S.) 989, and *State v. Waldrop*, 104 N. C. 453; 105 E. 694.

### 388. TOWNS AND CITIES

John C. Vivian, Oct. 28, 1922.

Under Sec. 5395, R. S. 1908, sewer district bonds must be redeemed at par and the city cannot pay a premium thereon.

### 389. MILITARY AIDES

P. J. Hamrock, Oct. 31, 1922.

Aide de camp merely held an honorable office and was not a member of the National Guard of the State of Colorado.

### 330. TAXATION

Colorado Tax Commission, Nov. 4, 1922.

Property of a municipal corporation of an adjoining state, located in this state, is subject to taxation in this state.

### 391. SCHOOLS

Mrs. L. O. Baker, Nov. 14, 1922.

Teachers of special subjects only are not entitled to participate in the general school fund created under Chapter 214, S. L. 1921.

The ruling of the State Superintendent that contributions from that fund to the various districts are limited to \$75 per month for a school year of nine months, is controlling until set aside by the courts.

The act applies only to teachers, and not to secretaries or clerks.

**392. TAXATION**

E. M. Dodd, Nov. 15, 1922.

Lots with the buildings thereon, owned by a denominational college, which is not conducted for private or corporate profit, are exempt from taxation.

**393. TORRENS ACT**

Land Commissioners, Nov. 16, 1922.

Registered titles under Secs. 714 to 801, R. S. 1908 (Laws of 1903, page 311, Secs. 1-99), are valid. The Act providing therefor is constitutional.

**394. COUNTY COMMISSIONERS**

F. A. Nichols, Nov. 17, 1922.

The fee and salary act of 1919, allowing traveling expenses to county commissioners, probably does not apply to a commissioner elected before that act took effect.

Sec. 30, Art. V, Const.

**395. COUNTY COMMISSIONERS**

John M. Woy, Nov. 21, 1922.

Where a vacancy occurs in the office of county commissioner, the same may be filled by the governor upon certification of one of the remaining commissioners where the other refuses to act.

**396. LEGAL PUBLICATIONS**

C. M. Miles, Nov. 21, 1922.

Delinquent tax lists should be published as directed by Sec. 5710, R. S. 1908.

Proceedings of boards of county commissioners should be published in a newspaper published at the county seat.

**397. SCHOOLS**

Elizabeth Hinton, Nov. 24, 1922.

Attendance of children in adjoining districts and tuition therefor may be provided for by agreement between the school boards concerned, but such boards are not required to enter into any such agreement at all.

School privileges are available only to bona fide residents of the district, and not to those who move into the district merely as a subterfuge to acquire the privileges of the schools of the district.

**398. COUNTY OFFICERS**

J. F. Mauldin, Nov. 27, 1922.

Bonds of County Assessors are fixed by Section 10, Chapter 134, S. L. 1913, and by Section 1342, R. S. 1908.

**399. STATE SOLDIERS' AND SAILORS' HOME**

**Soldiers who served in Philippine insurrection not eligible to the home, because insurrection was not a foreign war.**

Nov. 29, 1922.

Col. A. W. Hogle, Commandant Soldiers' and Sailors' Home,

Your letter of the 15th inst. has been received, enclosing the discharge papers of Fred Oliphant, and requesting the opinion of this department upon the following question, viz.:

"Is this person eligible to membership in this Home under the laws of Colorado?"

The law contains the following requirements for admission to the home:

"The Soldiers' and Sailors' Home shall be maintained for the care and treatment of honorably discharged soldiers, sailors and marines who served in the Union or Confederate armies between the 12th day of April, 1861, and the 9th day of April, 1865, in the War of the Rebellion, or those who have served in the regular or volunteer army or navy in any foreign war or Indian war in which the United States has been or may be engaged, who have been bona fide residents of this state for at least one year next preceding their application for admission to said Home; provided, such year or prior residence in the state shall not be necessary where the applicant was a member of a Colorado regiment of troops serving in any of said armies in any of the wars herein named." \* \* \*

(Session Laws of 1919, Chapter 100, p. 338.)

In this case no question has been raised as to sufficient residential requirements, so we may eliminate that.

The applicant does not claim to have served in the War of 1861-1865, nor in an Indian war, so that the question then is: Did Mr. Oliphant serve in the regular or volunteer army or navy in any *foreign* war in which the United States has been or may be engaged?

From your letter and the discharge papers accompanying the same, it appears that after peace had been declared between America and Spain, and the volunteers who were enlisted in the Spanish-American War were mustered out of the service, Mr. Oliphant enlisted as a private in Company F, 36th Regiment of Infantry, U. S. Volunteers, on the 22nd day of August, 1899, to serve during the period ending June 30, 1901, and that he was discharged from the service on the 16th day of March, 1901, by reason of muster out of the company. Furthermore, that while in the army he served in the Philippine Insurrection. If Mr. Oliphant had served in the Spanish-American War, which was a foreign war, he would, without doubt, have come within the provisions of the statute.

But at the time he enlisted that war was at an end, peace had been declared, and the volunteer soldiers engaged therein had been mustered out of service.

We now come to the question: Was the Philippine Insurrection a foreign war within the meaning and intent of the statute?

During said insurrection the United States was not then in war with Spain, or any other foreign country. At that time the Philippine Islands had been ceded to the United States, and were a part of the territory of the United States, and under the jurisdiction of the United States Government. The insurrection was an uprising on the part of the Filipinos against the lawful authority of the United States, and therefore could not be considered a *foreign war*; but it was rather a domestic disturbance or rebellion which the United States had to suppress by armed forces. The suppression, by United States troops, of a riot, uprising or insurrection upon the part of inhabitants thereof in Alaska, Hawaii, Pennsylvania, West Virginia or Colorado, could not, strictly speaking, be termed a foreign war, or a war with a foreign country, because all such territory is a part of the United States, and under the jurisdiction thereof.

If it be said that the Philippine Insurrection was a war with the Filipinos, the Filipinos were at that time subject to the jurisdiction of the United States, and were not then foreigners, and the war was not with a foreign country, and even if considered a war it was one among our own people, and within our own borders.

The word "foreign" is defined in Words and Phrases, p. 2881, Vol. 3, as follows:

"In a general sense, 'foreign' is applied to any place or thing belonging to another nation or country. \* \* \* In a political sense we call every country foreign which is not within the jurisdiction of the same government."

“A foreign country was defined by Mr. Chief Justice Marshall and Mr. Justice Story to be one exclusively within the sovereignty of a foreign nation and without the sovereignty of the United States.”

This is quoted by Mr. Justice Brown in the case of *DeLima v. Bidwell*, 182 U. S. 1, 180. See also *Words and Phrases*, Vol. 3, p. 2884.

It will be observed that the statute does not admit to the home all soldiers, sailors and marines who have served in the military or naval forces of the United States, but the benefits of the home are expressly limited to those soldiers, sailors and marines who have served in certain wars which are specified in the statute, and even if the Philippine Insurrection could be properly, termed a war, it is not mentioned therein—in other words, it is not expressly named in the statute, nor can it be reasonably implied that it was the intent of the General Assembly to include said insurrection as a foreign war.

We have endeavored to give the statute, a liberal construction, so far as possible, but the language employed therein is not ambiguous, and does not raise a doubt as to its meaning.

For the foregoing reasons we are of the opinion that Mr. Oliphant does not come within the provisions of the statute, and is therefore not eligible to the home.

We regret that we are unable to reach a more favorable conclusion, but however meritorious the services of the applicant may have been, the statute is not broad enough to cover a case of this kind, and we do not see how he can be admitted to the home without additional legislation.

The army discharge papers of Mr. Oliphant, which you submitted with your letter, are herewith respectfully returned.

400.

### SCHOOLS

Prof. N. J. Rice, Dec. 2, 1922.

The office of County Superintendent of Schools and of member of the Board of Directors of a district of the first class, are incompatible and cannot be occupied by the same person at the same time.

401.

### HIGHWAYS

Major L. D. Blauvelt, Dec. 7, 1922.

The words “8 tons on four wheels” in paragraph (a), Section 5, Chapter 141, S. L. 1921, refer to the cargo carried by a vehicle, and not to the weight of the vehicle plus the weight of the cargo.



**402. NATIONAL DEFENSE BONDS**

Hon. Oliver H. Shoup, Dec. 15, 1922.

National Defense Bonds may be sold in 1922 to pay obligations incurred in 1920.

**403. INHERITANCE TAX**

E. A. Johnson, Dec. 22, 1922.

Chapter 162, S. L. 1922, must be construed in connection with Chapter 144, S. L. 1921, with the result that the Inheritance Tax Commissioner must be notified before any balance remaining in a joint bank account is turned over to the surviving depositor.

# INDEX

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NOTE:--Opinion number follows each lead.

See also  
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